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federal register

Book 1 of 2 Books
Monday, January 26, 1981

Highlights

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Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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MEETINGS ANNOUNCED IN THIS ISSUE

CHANGED MEETING

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 46, No. 16
Monday, January 26, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 3

Services to the Public; Code of Federal Regulations Subscription Rate

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule.

SUMMARY: This document raises the annual subscription price of the *Code of Federal Regulations* (CFR) from $450 to $525. This increase in price is necessary because of increased production and distribution costs.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Normandin, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, 202–523–5240.

SUPPLEMENTARY INFORMATION: The cost of producing the CFR has risen since the last price increase in April 1979 (44 FR 23065). The Superintendent of Documents expects to recover most of this increase by raising the subscription rate $75 a year.

The prices of individual volumes of the CFR, also set by the Superintendent of Documents under the general direction of the Administrative Committee of the Federal Register, will increase accordingly.

The Committee also agreed to raise the price of the microfiche edition of the 1980 CFR from $125 to $150 per set, single delivery, and from $225 to $250 for a year's subscription with subscriber receiving each volume as it is published.

Accordingly, under the authority vested in the Committee, 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp. p. 189; the Committee revises § 3.4(b)(4) of 1 CFR as follows:

§ 3.4 Subscriptions and availability of Federal Register publications.

* * * * * *

(b) * * *

(4) *Code of Federal Regulations.* A complete bound set of the *Code of Federal Regulations* will be furnished by mail to subscribers for $525 per year payable in advance to the Superintendent of Documents. Individual copies of the code volumes are sold by the Superintendent of Documents at prices determined by the Superintendent under the general direction of the Administrative Committee.

* * * * *

Robert M. Warner,
Chairman.
Samuel L. Saylor,
Member.
Leon Ulman,
Member.

Approved: December 31, 1980.

Benjamin R. Civiletti,
Attorney General.

January 13, 1981.

Ray Kline,
Acting Administrator of General Services.

January 16, 1981.

[FR Doc. 81-2578 Filed 1-23-81; 8:45 am]
BILLING CODE 1505-02-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

Organization, Functions and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization of the Animal and Plant Health Inspection Service (APHIS) by the insertion of new addresses for three APHIS field organizations, the Administrative Management Field Servicing Office, Minneapolis, MN; the Veterinary Services Laboratory, Ames, IA; and the Veterinary Services North Central Regional Office, Denver, CO.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. Phone 202–447–5335 or 301–436–6466.

SUPPLEMENTARY INFORMATION: The Administrative Management Field Servicing Office moved to a new location within the City of Minneapolis, MN, on December 13, 1980. The Post Office box for the National Veterinary Services Laboratories, Ames, IA, is changed to read P.O. Box 844, Ames, IA, rather than P.O. Box 884 as published at 45 FR 73465; and a new address is given for the Veterinary Services North Central Regional Office previously located within the City of Denver, CO, effective February 1, 1981.

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553 it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management it is exempt from the provisions of E.O. 12044 Improving Government Regulations, and thus, does not require the preparation of a regulatory impact analysis. Accordingly, 7 CFR Part 371 is amended as follows:

Section 371.1 is amended by revising paragraphs (c)(2) and (3), to read as follows:

§ 371.1 General Statement.

* * * * * *

(c) * * *

(2) *Veterinary Services.*

Laboratories

National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010

Regions

North Central: 8301 East Prentice Avenue, Bldg. 230, DTC, Third Floor, Englewood, CO 80111

Northern: Bldg. 12, GSA Depot, Scotia, NY 12302

Southeastern: 700 Twiggs St., Room 821, Tampa, FL 33602

South Central: Texas and Pacific Bldg., Suite 310, 221 W. Lancaster Avenue, Ft. Worth, TX 76102

Western: 245 E. Liberty St., Room 300, Reno, NV 89501

(3) *Administrative Management.*

Field Servicing Office: Butler Square West, 100 North Sixth St., Minneapolis, MN 55403

(5 U.S.C. 301)

Issued at Washington, D.C., this 15th day of January 1981.

James O. Lee, Jr.,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 81-2924 Filed 1-23-81; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 78

Brucellosis Areas

Correction

In FR Doc. 80-40408, published in the issue of Tuesday, December 30, 1980 at page 85718 the following correction should be made:

On page 85718, § 78.20(b), third column, under *Kansas,* in the third line, the county "Clay," should be inserted between "Clark," and "Coffey".

BILLING CODE 1505-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Safe Deposit Box Service

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: In accordance with the established policy goals of clarifying and simplifying its regulations, the National Credit Union Administration Board has reviewed its existing regulation regarding safe deposit box service. As a result of this review, NCUA will adopt a simplified version of its present safe deposit box regulation. This action will allow greater flexibility to the boards of directors of Federal credit unions in the establishment of policies and procedures for leasing safe deposit boxes.

EFFECTIVE DATE: January 26, 1981.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Joseph W. Petrosky, Office of Examination and Insurance. Telephone: (202) 357-1055.

SUPPLEMENTARY INFORMATION: On October 17, 1980, the NCUA Board conducted a preliminary review on a proposal to determine the need for regulation concerning the leasing of safe deposit boxes.

After deliberating on these issues at the open board meeting of October 17, 1980, it was the unanimous decision of the NCUA Board to simplify the regulation and place the informational provisions of paragraphs (b) and (c) of the regulations into an appropriate NCUA manual so that guidance is available for Federal credit unions should they wish to provide this service.

This action will allow greater flexibility to the board of directors of Federal credit unions in the establishment of policies and procedures concerning the leasing of safe deposit boxes.

The NCUA Board indicated that this action was taken in the interest of reducing the regulatory burden imposed upon Federal credit unions. The NCUA Board is particularly interested in reducing the cumulative effects of regulations upon small Federal credit unions.

Regulatory Analysis

No regulatory analysis has been developed for this regulatory action because it will not result in (i) an annual effect on the economy of $100 million or more, or (ii) a major increase in costs or expenses for all, or a significant portion of, Federal or federally-insured credit unions with assets under $1 million or for other financial institutions.

Failure to Solicit Public Comment

The simplification of this regulation will permit Federal credit unions to exercise the authority to lease safe deposit boxes to its members. It is the NCUA Board's opinion that consumers, credit unions and other financial institutions will not be harmed by this action. Therefore, the Board, for good cause, finds that notice and public procedure on this action is unnecessary and thus exempt by 5 U.S.C. 553(b)(B). Further, since this action relieves restrictions, a 30 day delayed effective date is not provided, 5 U.S.C. 553(d)(1).

Procedure for Regulatory Development

The procedures set forth in NCUA's Final Report "In Response to Executive Order No. 12044: Improving Government Regulations" have been waived in accordance with the exception provided in Part 1 of the final report. The official responsible for the decision is Robert M. Fenner, Deputy General Counsel.

Beatrix D. Fields,

Deputy Secretary, National Credit Union Administration Board.

January 13, 1981.

(Sec. 107(15), 82 Stat. 284 (12 U.S.C. 1757(15)); Sec. 120(a), 92 Stat. 3681 (12 U.S.C. 1766(a)))

Accordingly, 12 CFR 701.30 is hereby simplified and revised as set forth below.

§ 701.30 Safe Deposit Box Service.

A Federal credit union may lease safe deposit boxes to its members.

[FR Doc. 81-2442 Filed 1-23-81; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Airworthiness Docket No. 80-ASW-60; Amdt. 39-4025]

14 CFR Part 39

Airworthiness Directives; Bell Helicopter Textron Models 214B and 214B-1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing Airworthiness Directive (AD) which was applicable to Bell Helicopter Textron (BHT) Models 214B and 214B-1 helicopters which are equipped with P/N 214-040-808-1 sprag clutches. The amendment requires the removal of freewheeling clutch assembly, P/N 214-040-021-001, and replacement with freewheeling clutch assembly, P/N 214-040-021-103. This modification is needed to minimize the failure problem associated with the freewheeling clutch assembly which uses sprag clutch P/N 214-040-808-001. The clutch failure problem is the result of the wear of the sprag clutch alignment cage elements resulting in lowered torque capability and subsequent sudden failures.

DATES: Effective—January 26, 1981. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The Alert Service Bulletin specified in this AD may be obtained from Bell Helicopter Textron, Product Support Department, Post Office Box 482, Fort Worth, Texas 76101.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: H. R. Whitlock, Propulsion Section, ASW-214, Engineering and Manufacturing Branch, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101, telephone (817) 624-4911, extension 525.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment No. 39-3726 (AD Docket No. 80-07-11) which established a retirement life of 600 hours' time in service for the sprag clutch, P/N 214-040-808-001, which is

used in the freewheeling clutch assembly, P/N 214-040-021-001. Since the effective date of AD No. 80-07-11, there have been reports of the failure of the sprag clutch, P/N 214-040-808-001, in less than 600 hours' time in service. The FAA is therefore superseding Amendment No. 39-3726 to require the freewheeling clutch assembly, P/N 214-040-021-001, be removed from service.

Since a situation exists which requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding a new airworthiness directive to read as follows:

Bell: Applies to Models 214B and 214B-1 helicopters, serial numbers up to and including S/N 28049.

Compliance is required as indicated unless already accomplished.

To prevent a clutch failure which will result in the loss of engine power to the main rotor, accomplish the following:

(a) The freewheeling clutch assembly, P/N 214-040-021-001, must be removed from service and P/N 214-040-021-103 clutch assembly installed according to the following schedule:

(1) P/N 214-040-021-001 clutch assemblies with 290 or more hours' time in service on the effective date of this AD must be removed from service within the next 10 hours' time in service.

(2) P/N 214-040-021-001 clutch assemblies with less than 290 hours' time in service on the effective date of this AD must be removed from service prior to attaining 300 hours' time in service.

(3) P/N 214-040-021-001 clutch assemblies with unknown time in service must be removed within the next ten hours' time in service.

Note.—BHT Alert Service Bulletin No. 214-80-13, dated August 22, 1980, pertains to this subject.

(b) Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to fly aircraft to a base where this AD can be accomplished.

(c) Any alternate equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

This AD supersedes AD 80-07-11 (Amdt. 39-3726, 45 FR 20778).

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Bell Helicopter Textron, Product Support Department, Post Office Box 482, Fort Worth, Texas 76101. These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas, and at the FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C.

A historical file on this AD, which includes the incorporated material in full, is maintained by the FAA at their headquarters in Washington, D.C., and at the Southwest Regional Office in Fort Worth, Texas.

This amendment becomes effective January 26, 1981.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Fort Worth, Texas, on January 8, 1981.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 81-2348 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-SO-72]

Alteration of Transition Area, Bay St. Louis, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates an extension in the Bay St. Louis, Mississippi, Transition Area. This action provides controlled airspace required to protect instrument flight operations at the Stennis International Airport. The airspace must be designated before the approach procedure can become effective.

EFFECTIVE DATE: 0901 GMT, February 19, 1981.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on Friday, November 28, 1980 (45 FR 79088), which proposed the alteration of the Bay St. Louis, Mississippi, Transition Area. No objections were received from this notice. This action provides controlled airspace protection for aircraft executing a new standard instrument approach procedure, NDB Runway 17, at Stennis International Airport. The establishment of the Hanco (nonfederal) nondirectional radio beacon, which will support the approach procedure, is presently being accomplished.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (46 FR 540) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, February 19, 1981, as follows:

Bay St. Louis, Mississippi

The present description is deleted and ". . . That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stennis International Airport (Lat. 30°22'15" N., Long. 89°27'16" W.); within 3 miles each side of the 359° bearing from the Hanco NDB (Lat. 30°27'03" N., Long. 89°27'19" W.), extending from the 6.5-mile radius area to 8.5 miles north of the NDB . . ." is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operational current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on January 12, 1981.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 81-2349 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-SO-77]

Alteration of Transition Area, Ocracoke, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redesignates an extension in the 700-foot transition area and corrects the name and geographic location of a nonfederal, nondirectional radio beacon. This action provides controlled airspace required to protect instrument flight operations at the Ocracoke Island Airport.

EFFECTIVE DATE: 0901 GMT, February 19, 1981.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

SUPPLEMENTARY INFORMATION: In the Ocracoke, North Carolina, Transition Area described in § 71.181 (46 FR 540), an extension was designated on the 059° bearing from the proposed Ocracoke RBN to provide controlled airspace for aircraft executing the NDB Runway 25 standard instrument approach procedure at the Ocracoke Island Airport. The approach course has changed from northeast to northwest of the airport because the proposed RBN location has been changed from on-airport to 1.5 miles northwest. Due to the off-airport location, the RBN has been renamed Pamlico.

It is necessary to redesignate the extension and correct the RBN name and location in order to provide controlled airspace to protect instrument flight operations at the airport. The establishment of the RBN, which will support the new NDB-A approach procedure, is presently being accomplished.

In the interest of safety, it is found that notice and public procedure hereon are impracticable and contrary to the public interest.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (46 FR 540) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, February 19, 1981, as follows:

Ocracoke, North Carolina

The present description is deleted and ". . . That airspace extending upward from 700 feet above the surface within a 5-mile radius of Ocracoke Island Airport (Lat. 35°06'04" N., Long. 75°57'57" W.); within 4 miles each side of the 324° bearing from the Pamlico RBN (Lat. 35°06'59" N., Long. 75°59'16" W.), extending from the 5-mile radius area to 11.5 miles northwest of the RBN, excluding the portion outside the continental limits of the United States. . . ." is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on January 12, 1981.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 81-2350 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 129

[Docket No. 19726; Amdt. Nos. 107-1, 108 (New), 121-167, 129-11, and 135-10]

Airplane and Airport Operator Security Rules

Correction

In FR Doc. 81-1403, published in the issue of Thursday, January 15, 1981, at page 3782 make the following correction to § 129.25(b)(4).

On page 3790, third column, fifth full paragraph from the top of the page, in the first line of paragraph (4), the reference now reading "Paragraph (c) of this section * * *" should read "Paragraph (d) of this section * * *".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 936

The Point Reyes-Farallon Islands National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Point Reyes-Farallon Islands National Marine Sanctuary off the coast of California (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and the activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on the activities regulated within the Sanctuary, the procedures by which persons may obtain permits for prohibited activities, and the penalties for committing prohibited activities.

DATE: These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. During the first 60 days after publication the Governor of California may certify that any terms of the Designation are unacceptable as they apply to State waters, in which case the Designation and regulations shall be modified and may be withdrawn entirely. Therefore, the effective date can be determined by calling or writing the contact identified below. Notification will also be published in the Federal Register when the regulations become effective.

ADDRESS: NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dallas Miner, Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634–4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431–1434 (the Act), authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries to preserve or restore distinctive conservation, recreational, ecological, or aesthetic values. Section 302(f)(2) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the

Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a national marine sanctuary an area of the waters off the coast of California between the Farallon Islands and the mainland from Point Reyes Headlands to Rocky Point extending seaward to a distance of 3 nautical miles (nmi) beyond territorial waters along the mainland, and out to 12 nmi from the mean high tide line of the Farallon Islands. This area was so designated on January 16, 1981. However, since the Sanctuary includes waters within the seaward boundary of the State of California, the Governor of California has 60 days in which to certify that any of the terms of the Designation are unacceptable to the State, in which case the terms certified will not become effective within State waters. In this event, the regulations must be modified accordingly or the entire Designation may be withdrawn if it no longer meets the objectives of the Act, the regulations, and the original Designation (see 15 CFR 922.26(e)).

In addition the Act, as amended by Public Law 96–332, provides that the Designation becomes effective unless Congress disapproves it or any of the terms by a concurrent resolution adopted by both Houses "before the end of the first period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, signing Public Law 96–332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjourned *sine die*. In view of Congress' schedule for the next few months, it is unlikely that these regulations will be effective before April 1981. Notification of the effective date will be published in the **Federal Register** at that time.

The waters included in the Sanctuary contain a variety of marine and nearshore habitats including bays, estuaries, rocky shores, grass beds, nesting sites, haulout areas and kelp beds. Topography and currents render the region one of the most productive off California. Marine mammals, birds, fish, plants and benthic resources are abundant in the Sanctuary year round. Although the area is close to several large metropolitan areas and sustains a variety of human uses, the rugged coastline remains undeveloped, and a large portion is protected by the Point Reyes National Seashore. However, use of the natural resources of the Point Reyes-Farallon Islands waters is increasing, and additional pressure is being placed on these resources from a number of human activities. Accordingly, the primary purpose of managing the area and of these implementing regulations is to protect and to preserve the marine birds and mammals, their habitats, and other natural resources from those activities which pose significant threats. Such activities include: hydrocarbon exploration and exploitation except for the laying of pipeline outside 2 nmi from the Islands, Bolinas Lagoon or Areas of Special Biological Significance (Section 936.6(a)(1)); discharges except for fish cleaning wastes and chumming materials, certain discharges incidental to vessel use of the area such as effluents from marine sanitation devices, engine exhaust and cooling waters, biodegradable galley wastes, and deck wash down, and municipal waste outfalls and dredge disposal with a certified permit (Section 936.6(a)(2)); construction on or alteration of the seabed except for navigational aids, for certified pipelines or outfalls, and for certain other minor activities (Section 936.6(a)(3)); the unnecessary operation of certain commercial vessels within 2 nmi of sensitive habitats and the operation of certain aircraft at lower than 1000 feet within 1 nmi of these areas (Section 936.6(a) (4) and (5)); and removing or harming historical or cultural resources (Section 936.6(a)(6)). All prohibitions must be applied consistently with recognized principles of international law.

The regulation of fishing in the Sanctuary waters will remain the responsibility of the California Department of Fish and Game, the Pacific Regional Fishery Management Council, and the National Marine Fisheries Service pursuant to the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, (see Article 5, Section 1 of the Designation Document), although fishing vessels are subject to the same discharge regulations as other vessels (Section 936.6(a)(2)).

On March 31, 1980 NOAA published proposed regulations for the Sanctuary in the **Federal Register** (45 FR 20907) and at the same time issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, an FEIS was issued on October 3, 1980, which described a somewhat revised regulatory regime. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The significant comments on the proposed regulations and the regulatory elements of the impact statements and NOAA's responses to them follow:

(1) *Comment:* Certain commenters maintained that no sanctuary should be designated since existing regulatory authorities already provide enough protection for the natural resources. They felt a marine sanctuary would only add an unnecessary and expensive layer of Federal bureaucracy.

Response: The many Federal and State agencies which exercise authority in the Point Reyes-Farallon Islands area provide a considerable degree of regulatory protection. However, no mechanism currently exists to provide comprehensive management, research, coordination, and assessment for the extraordinary diversity of natural resources concentrated in the waters around Point Reyes and the Farallon Islands.

The marine sanctuary program, unlike other programs which have jurisdiction in the area of the proposed sanctuary, provides a mechanism to focus on this particular geographically defined marine area and to provide comprehensive management and planning to protect the resources of the site. Other statutes either focus on management of much smaller areas, single resources, or have resource protection only as an ancillary goal. Marine sanctuary planning and management also provides for research and monitoring of the condition of the resources to assure long-term protection and maximum safe use and enjoyment; other statutes do not provide in most cases the same geographically focused, comprehensive research and monitoring effort. An educational/interpretive element of the program heightens public awareness of the value of the resources and thereby reduces the potential for harm; again, this aspect of the marine sanctuary program is unavailable under the present system.

Although certain uses of the area do not now seriously threaten resource quality, their impacts will become more significant as activities increase. The current multitude of regulatory authorities, many of which have different objectives and jurisdictions, are unlikely to be able to respond to future activities on the basis of ecosystem issues. Because these waters contain so many beneficial uses, the special planning and study possible in a marine sanctuary is necessary to ensure that they are used and preserved in the future as effectively as possible.

(2) *Comment:* The proposed regulation prohibiting the dumping of dredge materials in the marine sanctuary should be changed so that NOAA can allow the disposal of

nontoxic, dredged material in the marine sanctuary on a case-by-case basis.

Response: Until the designation of the permanent disposal site, NOAA will allow the continued use of the interim site, on a case-by-case basis. Other than for disposal at the existing interim site, NOAA has not modified its proposed prohibition of ocean dumping. Since it appears that the permanent disposal site will be established outside the proposed sanctuary boundaries, further modification of the proposed regulation was unnecessary. Certain potentially harmful effects will be avoided by the proposed regulation. The disposal of dredged material may harm marine biota by smothering and increased turbidity, even if the material is not toxic. These effects of ocean dumping are likely to cause the most damage in shallow, nearshore waters that have a high concentration of benthic organisms. In addition, dumping may interfere with fish trawling operations in waters less than 100 fathoms (183 m).

The Assistant Administrator for Coastal Zone Management must certify each permit for ocean dumping or proposed Corps of Engineers (COE) disposal activities at the interim site as consistent with the purposes of the sanctuary. Because of the infrequent use of the site and existing regulations on disposal, the disposal will not pose threats to sanctuary resources, nor will the certification of permits at the interim site be administratively burdensome. First, the interim disposal site has not been used since 1978. Between 1975 and 1978 about 50,000 cubic feet per year were dumped at the 100 fathom site. However, several dredging projects currently in various stages of planning may require deep ocean disposal before the final designation of a disposal site in 1982. Plans currently call for all dredged material disposal at the Alcatraz disposal site within San Francisco Bay, largely because of the great expense of transporting dredged material to the interim dumpsite.

Second, under the 1977 regulations issued pursuant to the Marine Protection Research, and Sanctuaries Act of 1972 (MPRSA), no ocean disposal of "toxic" wastes is allowed. All proposed dumping must comply with the regulations implementing Title I of the MPRSA, including findings that the activity will not "unduly degrade" the marine ecosystem. (42 FR 2477, Part 922, Subpart B). Thus, although before those regulations went into effect the 100 fathom site might have been used for disposing dredged material classified as polluted, the current regulations impose more protective standards to control use of the interim site. Certification will assure a special review by NOAA which will take into account the possible impacts described above.

(3) *Comment:* Section 936.6(a)(4) of the proposed regulations which prohibits, to the extent consistent with international law, vessels engaged in the trade of carrying cargo or supplying offshore hydrocarbon installations from entering the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance designated by the State, should be amended to exclude such vessel traffic from two nautical miles around these sensitive areas.

Response: NOAA has adopted this recommendation. The expanded area would provide a greater measure of assurance that marine mammals and birds in such a sensitive area would not be disturbed by such vessel traffic. It would also increase the buffer zone between sensitive habitat and any pollutants from vessel operations or accidents. While discharge of oil is prohibited in the area by other authorities, a buffer zone is the only viable protection from the impacts of accidental discharges. The expanded buffer zone would not conflict with any customary shipping routes or with any of the options considered by the U.S. Coast Guard in its port access routes study for this area, and would not impose any additional costs on shipping. Any potential increase in the cost of enforcing sanctuary regulations is justified by the added environmental protection.

(4) *Comment:* The sanctuary regulations should require vessels transitting the sanctuary to adhere to the U.S. Coast Guard's Vessel Traffic Separation Scheme (VTSS). Some commenters also suggested that tankers and barges transporting hydrocarbons be excluded from the proposed sanctuary.

Response: Although the suggested changes might decrease the risks of vessel accidents and associated polluting incidents to some presently unquantifiable degree, the provisions appear premature in light of the on-going Coast Guard evaluation of vessel routing issues. NOAA will coordinate its future review of both these issues closely with the Coast Guard after the results of the study are available.

The Coast Guard estimates that virtually all commercial vessel traffic currently complies with the San Francisco VTSS. Making the VTSS mandatory within the sanctuary would therefore not substantially change present operating conditions. In addition, under International Law, foreign flag vessels beyond the limits of the territorial sea cannot be regulated except under limited circumstances. Any regulation of navigation on the high seas must be endorsed by the International Maritime Consultative Organization (IMCO) to be recognized under international law, and apply to foreign flag traffic.

The Coast Guard must seek IMCO's designation of any mandatory Port Access Route (PAR) or VTSS in international waters. Thus the full cooperation of the Coast Guard is essential in order to deal effectively with vessel navigation issues. The Coast Guard is currently conducting a port access route study for the central and northern California Coast, and the entrance to San Francisco is under careful consideration as part of the study. Under the 1978 amendments to the Ports and Waterways Safety Act, the Coast Guard has the authority to make shipping lanes mandatory and will exercise that authority if that is the best course of action. Recommendations from the study will be available in January 1981. Several of the options under consideration would eliminate the northern VTSS which goes through the Gulf of the Farallones and would require all vessels to enter San Francisco Bay from either the western or the southern lanes. The implementation of any such option would virtually eliminate the need for any separate regulation of hydrocarbon transport in the Sanctuary. Even though such a measure would not in itself prohibit vessel traffic, including hydrocarbon transport, through the Sanctuary, failure to utilize a designated VTSS has sufficiently influenced the determination of liability in case of an accident that most ships' masters adhere to such systems and would likely avoid the Gulf. NOAA has commented on the PAR study, and the Coast Guard will take the proposed Point Reyes-Farallon Islands marine sanctuary into consideration in its decision. Finally, NOAA will consult with the Department of the Interior concerning the routing of vessels related to future oil and gas exploration and development.

The Designation Document

The Act and NOAA's general marine sanctuary regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management system for a marine sanctuary will be established by two documents, a Designation Document and the regulations issued pursuant to Section 302(f)(2) of the Act. The Designation Document will serve as a constitution for the Sanctuary, establishing among other things the purposes of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

As approved by the President on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary Designation Document provides as follows:

Final Designation Document

Designation of the Point Reyes-Farallon Islands National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92–532, as amended (the Act), the waters along the Coast of California north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article 1. Effect of Designation

Within the area designated as the Point Reyes-Farallon Islands National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restriction or prohibition may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of an area of the waters adjacent to the Coast of California of approximately 948 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland and 12 nmi from the

Farallon Islands and Noonday Rock, and including the intervening waters. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area That Give it Particular Value

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitat, including habitat for 23 species of marine mammals. Rookeries for over half of California's nesting marine birds and nesting area for at least 12 of 16 known U.S. nesting marine birds are found within the boundaries. Abundant fish and shellfish are also found within the Sanctuary.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and aesthetic value of the area:

a. Hydrocarbon operations.

b. Discharging or depositing any substance.

c. Dredging or alteration of, or construction on, the seabed.

d. Navigation of vessels except fishing vessels or vessels travelling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside the area 2 nmi from the Farallon Islands, Bolinas Lagoon or any Area of Special Biological Significance, other than that surrounding the Farallon Islands, established by the State of California prior to designation.

e. Disturbing marine mammals and birds by overflights below 1000 feet.

f. Removing or otherwise harming cultural or historical resources.

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Fishing and Waterfowl Hunting.* The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article 4. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b), and mariculture activities involving alteration or construction of the seabed can be regulated in accordance with Article 4, Section 1, paragraph (c). All regulatory programs pertaining to fishing and to waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this Article and in Article 4 includes mariculture.

Section 2. *Defense Activities.* The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

Article 6. Alterations to This Designation

This Designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Regional Fishery Management Council, and approval by the President of the United States.

[End of Designation Document]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearings and approval by the President.

Public Review and Comment

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 936 is proposed as follows:

PART 936—THE POINT REYES/FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

Sec.

Authority: Sec. 302(d), (f), (g), and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431–1434. Sections 302(f), 302(g) and 303 of the Act.

§ 936.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431–1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

§ 936.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the extraordinary ecosystem, including marine birds, mammals, and other natural resources, of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource.

§ 936.3 Boundaries.

The Sanctuary consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (nmi²). The coordinates are listed in Appendix I.

The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 nmi beyond State waters. The Sanctuary also includes the waters within 12 nmi of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

§ 936.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Areas of Special Biological Significance" (ASBS) means those areas established by the State of California prior to the designation of the sanctuary except that for purposes of these regulations, the area established around the Farallon Islands shall not be included.

(c) "Assistant Administrator" means the Assistant Administrator for Coastal

Zone Management, National Oceanic and Atmospheric Administration.

(d) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government or any State or local unit of government.

(e) "Vessel" means watercraft of any description capable of being used as a means of transportation on the waters of the Sanctuary.

§ 936.5 Allowed activities.

All activities except those specifically prohibited by Section 936.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority. Recreational use of the area is encouraged.

§ 936.6 Prohibited activities.

(a) Except as may be necessary for national defense, in accordance with Article 5, Section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with Sections 936.8 or 936.9. All prohibitions shall be applied consistently with international law.

(1) Hydrocarbon operations. Hydrocarbon exploration, development, and production are prohibited except that pipelines related to operations outside the Sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance where certified to have no significant effect on sanctuary resources in accordance with § 936.9.

(2) *Discharge of substances.*

No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials (bait).

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the sanctuary generated by:

(A) marine sanitation devices;

(B) routine vessel maintenance, e.g., deck wash down;

(C) engine exhaust; or

(D) meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 nmi south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with Section 936.9.

(3) *Alteration of or construction on the seabed.*

Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with Section 936.9, no person shall:

(i) Construct any structure other than a navigation aid,

(ii) Drill through the seabed, and

(iii) Dredge or otherwise alter the seabed in any way other than by anchoring vessels or botton trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) *Operations of vessels.*

Except to transport persons or supplies to or from islands or mainland areas adjacent to sanctuary waters, within an area extending 2 nautical miles from the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance, no person shall operate any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(5) *Disturbing marine mammals and birds.*

No person shall disturb seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) *Removing or damaging historical or cultural resources.*

No person shall remove or damage any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 936.7 Penalties for commission of prohibited acts.

(a) Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation. Procedures are outlined in Subpart D of Part 922 (15 CFR Part 922) of this chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 936.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary, prohibited under Section 936.6, if such an activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Coastal Zone Management, Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) below and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to

this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely if the permit holder (the Holder) has violated the terms of the permit or applicable regulations. Any such action will be provided in writing to the Holder, and will include the reason(s) for the action taken. The Holder may appeal the action as provided for in § 936.10.

§ 936.9 Certification of other permits.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 936.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance, or the disposal of dredge material at the interim dumpsite now established approximately 10 nmi south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person or entity, within or outside the Federal Government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition certification within 60 days from the date that the Assistant Administrator receives notice of the proposed permit and the necessary supporting data.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 936.10.

§ 936.10 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial or conditioning of any permit under § 936.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reason(s) therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in Section 936.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, and the Hearing Officer's recommended decision, if any, as provided in paragraph (c) and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated Hearing Officer after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such hearing must normally be held no later than 30 days following publication of the notice in the Federal Register unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different), and other interested persons (at the discretion of the Hearing Officer) may appear personally or by counsel at the hearing, and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the Appellant or Applicant stating the reason(s) for the extension.

Appendix I.—*Point Reyes/Farallon Islands Proposed Marine Sancturary, California, West Coast, United States*

[Listing of 'practical' (rounded-off) coordinates for the two boundary alternatives, coordinates have been rounded-off to whole values for seconds of latitude and longitude.]

Pt. No.	Latitude	Longitude
1	38°15'50"	123°10'49"
2	38°12'36"	123°07'05"
3	38°09'57"	123°05'27"
4	38°08'27"	123°04'53"
5	38°07'42"	123°05'11"
6	38°06'08"	123°05'49"
7	38°05'27"	123°06'10"
8	38°04'45"	123°06'29"
9	38°03'54"	123°06'58"
10	38°03'08"	123°07'38"
11	37°58'11"	123°08'44"
12	37°57'39"	123°11'25"
13	37°54'19"	123°17'41"
14	37°48'10"	123°21'20"
15	37°43'57"	123°21'16"
16	37°39'38"	123°19'05"
17	37°37'25"	123°16'39"
18	37°36'55"	123°15'58"
19	37°35'30"	123°13'31"
20	37°33'47"	123°11'51"
21	37°31'12"	123°07'40"
22	37°30'30"	123°05'42"
23	37°29'39"	123°00'24"
24	37°30'34"	122°54'18"
25	37°31'48"	122°51'32"
26	37°34'18"	122°48'10"
27	37°36'59"	122°46'06"
28	37°39'59"	122°45'00"
29	37°52'56"	122°37'35"
A-1	37°36'05"	123°14'30"
A-2	37°38'01"	123°19'37"
A-3	37°41'20"	123°23'30"
A-4	37°45'34"	123°25'33"
A-5	37°50'06"	123°25'29"
A-6	37°54'17"	123°23'18"
A-7	37°57'32"	123°19'19"
A-8	37°59'22"	123°14'06"
A-9	37°59'32"	123°08'25"

[FR Doc. 81-2483 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-08-M

15 CFR Part 936

Gray's Reef National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Gray's Reef National Marine Sanctuary, 17.5 nmi east of Sapelo Island, Georgia (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document (the Designation) acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and the activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on activities regulated within the Sanctuary, the procedures by which persons may obtain permits for otherwise prohibited activities, and the penalties for committing prohibited actions.

DATE: These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress, concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. Therefore, the effective date can be determined by calling or writing the contact identified below. However, notification will be published in the Federal Register when the regulations become effective.

ADDRESS: NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634–4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 USC 1431–1434 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries to preserve or restore distinctive conservational, recreational, ecological, or aesthetic values. Section 302(f)(1) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U. S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a marine sanctuary a 16.68 square nautical mile (sq nmi) area located 17.5 nmi east of Sapelo Island, Georgia. The area was so designated on January 16, 1981.

The Act, as amended by Public Law 96–332, provides that the Designation becomes effective unless Congress disapproves it or any of its terms by a concurrent resolution adopted by both Houses "before the end of the first period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, when signing Public Law 96–332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjournment *sine die*. It is unlikely that these regulations will become effective before April 1981. Notification of the effective date will be published in the Federal Register at that time.

The proposed area is a biologically productive live bottom reef on the South Atlantic Continental Shelf which supports representatives of Virginian, Carolinian, and West Indian Biota, including an array of seaweeds, invertebrates, fish, and turtles. The primary purpose of the regulations is to protect and to preserve the live bottom reef ecosystem, including many reef dwelling organisms. Accordingly, all activities which would adversely impact live bottom resources are prohibited, except those permitted by the Assistant Administrator in accordance with § 938.8. Such activities include: alteration of or construction on the seabed (§ 938.6(a)(1)); wire trap fishing (§ 938.6(a)(4)); bottom trawling and specimen dredging (§ 938.6)(5)); and marine specimen collecting (§ 938.6(a)(6)). Similarly, activities harming cultural or historical artifacts in the area are prohibited, except by permit (§ 938.6(a)(7)). Finally, discharge and dumping of polluting materials which could damage the natural values of the area are prohibited (§ 938.6(a)(2)). Spearfishing and anchoring are listed in the Designation as activities potentially subject to regulation, but no regulations are proposed at this time. Vessels will be required to be operated in accordance with Federal rules and regulations (§ 938.6(a)(3)). Except with respect to the deliberate damage to seabed formation, anchoring, the use of certain fishing methods, and discharges, fishing activities at the live bottom are not subject to sanctuary regulation.

On June 11, 1980, NOAA published proposed regulations for the Sanctuary in the Federal Register (45 FR 39507) and issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, an FEIS was issued in September 1980. In response to comments on the DEIS, the proposed regulatory regime was revised in the FEIS to list anchoring in the Designation Document but exempt it from regulation at this time. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The more significant comments on the proposed regulations and the regulatory elements of the impact statements and NOAA's responses to them follow:

(1) *Comment:* NOAA's proposal in the DEIS to prohibit anchoring on hard bottom outcrops and to restrict anchoring to sand bottom areas was considered inappropriate by several reviewers who stated that (1) field data showing negative impacts from current anchoring activity was lacking; (2) boaters cannot visually differentiate between hard and soft bottom substrate due to water depth and turbidity; and (3) the regulation would discriminate against user groups which do not have the skill or equipment to locate appropriate anchoring areas.

Response: NOAA reevaluated information concerning anchoring at Gray's Reef and decided that anchoring need not be regulated at this time. NOAA has listed anchoring in the Designation and will undertake various management tasks: (1) monitor anchoring practices at Gray's Reef to determine activity levels, gear types,

and environmental impacts; (2) conduct a thorough underwater resource survey to determine the exact nature and extent of hard bottom and soft bottom coverage in the sanctuary; (3) prepare nautical maps for public use showing the bathymetry and geomorphology depicted by the survey mentioned above; (4) study the feasibility of designating anchorage areas with mooring buoys; and (5) educate the user public concerning safe anchoring practices as this information becomes available through environmental impact analysis.

(2) *Comment:* Because knowledge of the extent of live bottom coverage at Gray's Reef is incomplete at this time, a few reviewers recommended that NOAA consider the largest reasonable boundary area or at least an adjustable boundary.

Response: The current proposal opts for a conservative 16.68 sq nmi sanctuary area, which includes a previously mapped 12 sq nmi area of intense concentration of live bottom and a quarter nmi extension from the periphery to provide for the inclusion of previously unidentified live bottom. As discussed in the FEIS, the ocean floor of the sanctuary and its immediate surroundings will be surveyed following designation. In the event that the survey reveals significant amounts of additional live bottom habitat that would be suitable for inclusion in the sanctuary, boundary adjustments can be made in accordance with sanctuary program regulations.

(3) *Comment:* Some local fishermen and SCUBA divers took issue with the possible regulation of spearfishing at Gray's Reef, arguing that this activity presently does not threaten resources at the live bottom.

Response: Evidence gathered by NOAA through consultation with persons in the field supported the claim that spearfishing does not pose an immediate threat to sanctuary resources. As a result, NOAA determined that spearfishing should not be subject to regulation in the Sanctuary at this time. Spearfishing is listed in the Designation and will be monitored, rather than regulated.

(4) *Comment:* Some reviewers commented that NOAA was giving preferential treatment to hook and line fishing by exempting it from the Designation and potential sanctuary regulation. Similarly, several thought that NOAA was forfeiting its mandate to manage the sanctuary in a comprehensive manner by exempting this activity.

Response: NOAA proposes to rely on the South Atlantic Fishery Management Council (SAFMC) to control hook and line fishing in the sanctuary pursuant to Fishery Management Plans (FMPs). NOAA reviewed draft FMPs and determined that proposed management measures should be adequate to manage hook and line fishing. Fishing by this method is likely to affect sanctuary resources only if the catch level is too high. Setting this level is the responsibility of the SAFMC whose objectives should be consistent with NOAA's. NOAA will monitor all fishing activities at Gray's Reef and will continue to work closely with the SAFMC to ensure that compatible management measures are implemented to maintain and protect fishery resources in the Sanctuary.

(5) *Comment:* A few commentors felt that marine sanctuary status for Gray's Reef was unnecessary, stating that (1) the status quo already provides enough protection and a marine sanctuary would only add an unnecessary and expensive layer of Federal bureaucracy and (2) because Gray's Reef is located 17.5 nmi from shore, factors of distance, weather, sea conditions, and fuel costs limit use of the reef.

Response: (1) The many Federal agencies which exercise authority in the proposed area provide a considerable degree of regulatory protection for the resources of the area. However, the extraordinary diversity of natural resources concentrated in the proposed sanctuary deserves additional attention beyond that provided by the present institutional structure.

The marine sanctuary program, unlike other programs which have jurisdiction in the area of the proposed sanctuary, includes a mechanism to focus on this particular geographically defined marine area and to provide comprehensive research and monitoring of the condition of the resources to assure long-term protection and maximum safe use and enjoyment; other statutes do not provide in most cases the same geographically focused, comprehensive research and monitoring effort. An educational element of the program heightens public awareness of the value of the resources and thereby reduces the potential for harm; again, this aspect of the marine sanctuary program is unavailable under the present system.

Although certain uses of the area do not now seriously threaten resource quality, they could have more significant impact when activities increase. The current multitude of regulatory authorities, many of which have different objectives and jurisdictions, may not be able to respond to future activities on the basis of ecosystem issues. Because these waters contain so many beneficial uses, the special planning and study possible in a marine sanctuary is necessary to ensure that they are used and preserved in the future as effectively as possible.

(2) Gray's Reef is both one of the largest naturally occurring live bottoms in the South Atlantic and the closest known live bottom off Georgia. The average Georgia offshore recreational fishing boat (22 feet and 150–175 horsepower) on an average day (2 to 4 foot seas) departing from Sapelo Sound makes the trip to Gray's Reef in one hour or less.

Unlike tropical reefs farther south, Gray's Reef has been isolated from many human impacts. The availability of nearshore artificial reefs and some natural reefs farther offshore Georgia, the environmental constraints posed by unpredictable weather conditions and distance from shore, and the rural character of coastal Georgia tend to limit use of Gray's Reef. However, use of this area is expected to increase in the future in direct relation to increased demand for marine-related recreation, vessel fuel expenses, and development of domestic energy and fishery resources. Whether coastal Georgia's generally rural composition will act as a deterrent so increased use is not known. With or without sanctuary status, Gray's Reef will remain a favored recreational, educational, and research site.

The Designation Document

NOAA's marine sanctuary program regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management regime for a marine sanctuary will be established by two documents, the Designation document (the Designation) and the regulations issued pursuant to Section 302(f) of the Act. The Designation serves as a constitution for the sanctuary, establishing among other things the purpose of the sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

The Gray's Reef National Marine Sanctuary Designation Document is as follows:

Final Designation Document—Designation of The Gray's Reef National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National

Marine Sanctuary for the purposes of: (1) protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

Article 1. Effect of Designation

Within the area designated as The Gray's Reef National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of an area of high seas waters covering the live botton which is located 17.5 nmi due east of Sapelo Island, Georgia. Exact coordinates are defined by regulation (§ 938.3).

Article 3. Characteristics of the Area

The Sanctuary consists of submerged limestone rock reefs with contiguous shallow-buried hardlayer and soft sedimentary regime which support rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human use, including recreational fishing and diving, scientific research, and educational demonstrations.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* To ensure the protection and preservation of the Sanctuary's marine features and the ecological, recreational, and aesthetic value of the area, the following activities within the Sanctuary may be regulated to the extent necessary:

a. Dredging or alteration of, or construction on, the seabed;
b. Discharging or depositing any substance or object;
c. Vessel operations, including anchoring;
d. Wire trap fishing;
e. Bottom trawling and specimen dredging;
f. Spearfishing;
g. Marine specimen collecting; and
h. Removal of historic or cultural resources.

Section 2. *Consistency With International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Defense Activities.* The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. *Other Programs.* All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations will set forth any necessary certification procedures.

Article 6. Alterations to This Designation

This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the South Atlantic Regional Fishery Management Council, and approval by the President of the United States.

[End of Designation]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearing and approval by the President. Spearfishing and anchoring are listed in Article 4 because of the potential for damage; however, no additional regulation of these activities is proposed at this time.

Public Review and Comment

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 938 is added as follows:

PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

Sec.

Authority: Sec. 302(a), (f), (g) and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431–1434.

§ 938.1 Authority.

The Sanctuary has been designated pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431–1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

§ 938.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the live bottom ecosystem and other natural resources of the waters of Gray's Reef and to ensure the continued availability of the area as an ecological, research, and recreational resource.

§ 938.3 Boundaries.

The sanctuary consists of 16.68 square nautical miles of high sea waters off the coast of Georgia. The sanctuary boundary includes all waters within a rectangle starting at coordinate 31° 21′ 45″ N, 80° 55′ 17″ W, commencing to coordinate 31° 25′ 15″ N, 80° 55′ 17″ W, thence to coordinate 31° 25′ 15″ N, 80° 49′ 42″ W, thence to coordinate 31° 21′ 45″ N, 80° 49′ 42″ W, thence back to the point of origin.

§ 938.4 Definitions.

(a) "Administrator" refers to the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" refers to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" is any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government or any State or local unit of government.

§ 938.5 Allowed activities.

All activities except those specifically prohibited by Section 938.6 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority.

§ 938.6 Prohibited activities.

(a) Except as may be necessary for national defense in accordance with Article 5, Section 2 of the Designation or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with Section 938.8. All prohibitions will be applied consistently with international law.

(1) *Alteration of or construction on the seabed.*

No person shall dredge, drill, or otherwise alter the seabed in any way nor construct any structure other than a navigation aid without a permit.

(2) *Discharge of substances.*

No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) *Operation of watercraft.*

All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no Sanctuary.

(4) *Wire trap fishing.*

No person shall use, place, or possess wire fish traps within the Sanctuary without a permit.

(5) *Bottom trawling and specimen dredging.*

No person shall use a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device within the Sanctuary without a permit.

(6) *Marine specimen collecting.*

(i) No person shall break, cut, or similarly damage, take, or remove any bottom formation, any marine invertebrate, or any marine plant without a permit.

(ii) No person shall take without a permit any tropical fish, which is a fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes, and which lives in a direct relationship with the live bottom community.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives, or similar methods to take any marine animal or plant.

(7) *Removing or damaging historic or cultural resources.*

No person shall tamper with, damage, or remove any historic or cultural resources without a permit.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized priniciples of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 938.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation.

§ 938.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under Section 938.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Sanctuary Programs, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) below and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely, if the permit holder has violated the terms of the permit or applicable regulations. Any such action will set forth in writing to the permit holder and will include the reason(s) for the action taken. The permit holder may appeal the action as provided for in § 938.10.

§ 938.9 Certification of other permits.

(a) All permits, licenses and other authorizations issued pursuant to any

other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by Section 938.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) The Assistant Administrator may amend, suspend, or revoke the certification made under this section whenever continued operation would violate any term or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken. Either the permit holder or the issuing agency may appeal the action as provided for in Section 938.10.

§ 938.10 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial, or conditioning of any permit under § 938.8 to the Administrator or NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reason(s) therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 938.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, the Hearing Office's recommended decision, if any, as provided in paragraph (c), and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated Hearing Officer after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such hearing must normally be held no later than 30 days following publication of the notice in the **Federal Register** unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different) and other interested persons (at the discretion of the Hearing Officer) may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action will constitute final action for the Agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the Appellant or Applicant stating the reason(s) for the extension.

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15 CFR Part 937

The Looe Key National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Looe Key National Marine Sanctuary, 6.7 nautical miles southwest of Big Pine Key, Florida (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on activities regulated within the Sanctuary, the procedures by which persons may obtain permits for otherwise prohibited activities, and the penalties for committing prohibited actions.

DATE: These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress, concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjourment *sine die*. Therefore, the effective date can be obtained by calling or writing the contact identified below. In addition, notification will be published in the **Federal Register** when the regulations become effective.

ADDRESS: NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the continental shelf as marine sanctuaries to preserve or restore distinctive conservational, recreational, ecological, or aesthetic values. Section 302(f)(1) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a marine sanctuary a 5.32 square nautical mile (sq nm) area located 6.7 nm southwest of Big Pine Key, Florida. The area was so designated on January 16, 1981.

The Act, as amended by Public Law 96-332, provides that the Designation becomes effective unless Congress disapproves it or any of its terms by a concurrent resolution adopted by both Houses "before the end of the first

period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, when signing Public Law 96–332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjournment *sine die*. It is unlikely that these regulations will become effective before April 1981. Notification of the effective date will be published in the **Federal Register**.

The proposed area is one of the few remaining well-developed living coral reef communities off the continental United States. The Sanctuary area includes a spectacular "spur and groove" coral formation supporting a tremendous diversity of marine species. The primary purpose of the proposed regulations is to protect and to preserve the coral reef ecosystem, including the reef dwelling organisms. Accordingly, all activities which would adversely impact coral or other distinctive marine resources are prohibited, except those permitted by the Assistant Administrator in accordance with Sec. 937.8. Such activities include: handling, picking or collecting (Sec. 937.6(a)(1)), anchoring on coral within a core trapezoidal area (Sec. 937.6(a)(2)), and using harmful fishing methods (Sec. 937.6(a)(3)). Also activities damaging cultural or historical antifacts in the area including the wreck of the H.M.S. Looe are prohibited (Sec. 937.6(a)(4)). Finally polluting activities which could damage the natural values of the area are prohibited (Sec. 937.6(a)(5)) as is tampering with markers (Sec. 937.6(a)(6)). Except with respect to the removal of or damage to coral or other distinctive features, anchoring, the use of certain fishing methods, and discharges, fishing activities are not subject to Sanctuary regulation and remain the responsibility of the Regional Fishery Management Council(s).

On May 20, 1980, NOAA published proposed regulations for the Sanctuary in the **Federal Register** (45 FR 33645) and issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, a Final Environmental Impact Statement (FEIS) was issued in November 1980. In response to coments on the DEIS, the proposed regulatory regime was revised in the FEIS in several respects: the prohibition on anchoring on coral was modified to apply only to the fore reef (the area of the well defined "spur and groove" coral) rather than the entire Sanctuary, a restriction on the speed of watercraft was eliminated, and permitting for tropical specimen collecting was restricted to educational or scientific purposes. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The more significant comments on the proposed regulations and the regulatory elements of the impact statement and NOAA's responses to them follow:

(1) *Comment:* Several reviewers commented that adequate protection would be afforded Looe Key by the Fishery Management Council pursuant to the Fishery Conservation and Management Act (FCMA) and that sanctuary designation would, therefore, be duplicative and unnecessary.

Response: The Regional Fishery Management Councils (FMC) develop Fishery Management Plans (FMP), which provide for protection of selected fishery resources but in general do not focus on site-specific ecosystem management. FMP's do not necessarily consider elements of the ecosystem which are not harvested nor do they address the entire range of threats to which an area like Looe Key can be subjected. Title III of the Marine Protection, Research and Sanctuaries Act, on the other hand, authorizes conservation of special or threatened ecosystems *per se*. Because of the differing emphases of the two statutes, the efforts of the FMP's and the Marine Sanctuaries Program should, through cooperative efforts, complement each other.

In particular, major differences between the Councils' joint Coral and Coral Reef Resources FMP and the NOAA Looe Key marine sanctuary proposal include: (a) the size of the specific area to be protected, (a one sq nm Habitat Area of Particular Concern proposed in the draft Coral and Coral Reef Resources FMP vs. the 5 sq nm sanctuary); (b) the emphasis on comprehensive management planning, including interpretive programs and design and implementation of long-term site specific research and (c) the range of organisms toward which management attention is directed. Because the Council's FMP limits the definition of coral reef resources to the actual coral structure, the majority of invertebrates and lower vertebrates remain without specific protection. The productivity of coral reefs, equalled only by that of tropical rain forests, is a result of all the organisms forming the reef structure. It is this entire specialized ecosystem and not just one of its components that is the focus of sanctuary integrated research, education and regulation over the long-term.

(2) *Comment:* Anchoring should not be restricted throughout the entire Sanctuary but only on the fore reef area where the "spur and groove" coral system is found. The larger restriction unduly hampers commercial and recreational fishing and recreational use of the area without offering significant benefits.

Response: Comment accepted. See change in Sec. 937.6(a)(2)(A).

(3) *Comment:* The proposed 5 sq nm-boundary was criticized both as being too large and too small. A number of comments in the former category felt that 1 sq nm area proposed by the Fishery Management Councils as a Habitat of Particular Concern would provide an adequate management area.

Response: Protection of one sq nm area will provide for prohibitions of physical damage to the fore reef and associated organisms but it will not likely provide an adequate area for assuring biological integrity of the system. In the marine environment, protection of any core area (fore reef) requires identification and protection of even larger areas (buffers) where essential processes for the stability of the core take place. NOAA does not believe that 1 sq nm offers a reasonable buffer to assure long-term productivity of the Looe Key reef system.

The 5 sq nm sanctuary proposal has also been criticized as being inadequate to protect the fore reef because a 5 sq nm area is too small and vulnerable to outside harmful activities. In addition, some reviewers felt that the Sanctuary proposal was too small to contribute to protection of the reef tract itself. It is true that marine systems cannot be managed by reliance upon traditional land management techniques.

Essential differences between marine and terrestrial environments include the size of the ecosystems, the mobility of marine organisms and the three dimensional nature of the hydrosphere, sink, and downstream effects. Because of these characteristics, setting aside limited marine areas such as Looe Key contributes to protection of the larger system. Locating these small candidates for protection involves consideration of their location, number, size and linkages. Ideally, management would be able to identify the linkages, protect them and thereby protect the region as a whole while we continue to use and enjoy it. Though Looe Key alone represents a small segment of the reef system, it is possible that by focusing intensive management on smaller discrete units such as Biscayne Bay National Park, Key Largo National Marine Sanctuary, John Pennekamp State Park, Fort Jefferson National Park, and Looe Key we can protect enough of the reef tract linkages to insure protection of the entire system.

In addition, these discrete protected areas are tied together by the broader conservation measures afforded under the Management Councils' Coral and Coral Reef Resources Fishery Management Plan. In the near future other FMP's will be implemented for fisheries under the jurisdiction of the South Atlantic Council. All of these entities, together with heightened awareness of the need for close cooperative management strategies, should provide an increased level of protection.

A 5 sq nm Sanctuary provides a reasonable buffer adequate to protect the fore reef without significant economic impact. Should

it become apparent at some future date based on sound data, that a larger boundary is necessary, the Designation Document could be revised. Such an action, however, would require Presidential approval.

In conclusion, after assessing the potential impacts of larger Looe Key sanctuary boundaries, NOAA continues to propose the 5 sq nm alternative. In a purely biological sense, a sanctuary covering the whole of the Florida Keys might be more desirable; however, the Looe Key proposal offers a workable proposal which will contribute to protection of the integrity of the entire reef tract and at the same time minimize economic impacts to area residents.

(4) *Comment:* A number of reviewers opposed on ecological or philosophical grounds NOAA's proposal to allow by permit tropical specimen collecting for amateur and commercial purposes. In addition, several reviewers felt that administration and enforcement of a permit system for effective regulation of commercial tropical specimen collecting could not be developed.

Response: Subsequent consultations with existing commercial permitting authorities emphasized the difficulties involved. It is not likely that permittees could be monitored to assure that their actions would be consistent with the conditions of the permit without an elaborate surveillance system with specified checkpoints for ingress and egress at the sanctuary boundaries. On the other hand, establishment of a limited permitting system to allow taking of tropical specimens for research and scientific purposes could be accomplished without administrative and enforcement difficulties. It is already being done in the Key Largo National Marine Sanctuary and the number of permit applications is low. It is anticipated that most research within the sanctuary would be nonconsumptive (i.e., observational) and would not require a permit. Limiting the taking of specimens to research and educational purposes only will result in significantly fewer permits than would a system which included commercial taking.

Furthermore, there are many available, easily accessible, and suitable areas for tropical specimen collectors to capture tropical fish and invertebrates in south Florida. Prohibiting collecting in the Looe Key area would therefore cause limited economic loss to present commercial collectors.

Accordingly the permitting criteria in Sec. 937.8(a) have been changed to prohibit collecting except by permit for scientific and educational purposes. The regulation, however, does not exclude collecting for sale to public aquaria and other educational institutions. The final regulations will help protect and enhance the tropical specimen populations at Looe Key, prevent depletion of ecologically important species, add to the aesthetics of the sanctuary and help maintain long-term productivity of this small reef for future generations.

The Designation Document

NOAA's marine sanctuary program regulations (15 CFR Part 922), provide that the management regime for a marine sanctuary will be established by two documents, a Designation Document and regulations issued pursuant to Section 302(f) of the Act. The Designation Document serves as a constitution for the Sanctuary, establishing among other things the purpose of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

The Looe Key National Marine Sanctuary Designation Document is as follows:

Designation Document of the Looe Key National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532 (the Act), the waters at Looe Key are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this valuable and fragile ecological and recreational resource and of stimulating research activities and public awareness of its value and vulnerability.

Article 1. Effect of Designation

Within the area designated as the Looe Key National Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of a 5.32 square nautical mile (sq nm) area of the waters located off the coast of Florida 6.7 nm (12.5 km) southwest of Big Pine Key in the lower Florida Keys. The precise boundaries are as follows:

Latitude and Longitude Are Furnished to .001 of a Second

Pt. No.	Latitude	Longitude
2-1	24°31'37"	81°26'00"
2-2	24°33'34"	81°26'00"
2-3	24°34'09"	81°23'00"
2-4	24°32'12"	81°23'00"

Article 3. Characteristics of the Area That Give it Particular Value

The Sanctuary area is a valuable diverse and biologically productive living coral reef community in the Florida Reef Tract, including an array of tropical fish species and a well defined classic "spur and groove" reef system. The site also provides feeding, spawning, and nursery areas valuable for commercial fisheries and serves as a commercial, ecological, research and recreation resource.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

a. Collecting and damaging coral.
b. Tropical specimen collecting.
c. Vessel operations.
d. Spearfishing.
e. Wire fish trap fishing.
f. Lobster potting.
g. Bottom trawling and specimen dredging.
h. Discharging or depositing certain substances.
i. Dredging or alteration of or construction on the seabed.
j. Removing or otherwise harming cultural or historic resources.

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law including treaties and international agreements to which the United States is a party.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article would be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Fishing.* The regulation of fishing if not authorized under Article 4 except with respect to the removal or damage of coral (paragraph (a)), the removal of tropical fish and invertebrates, (paragraph (b)), and the use of certain techniques including paragraphs (d) through (g). In addition, fishing vessels may be regulated with respect to discharges (paragraph (h)) and anchoring (paragraph (c)). All regulatory programs pertaining to fishing, including particularly Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.* shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by regulation implementing Article 4.

Section 2. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with all regulations to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

Article 6. Alterations to this Designation

This Designation can be altered only in accordance with the same procedures by

which it has been made, including public hearings, consultation with interested Federal and State agencies and the appropriate Regional Fishery Management Councils and approval by the President of the United States.

[End of Designation Document]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearing and approval by the President.

Public Review and Comment:

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 937 is added as follows:

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

Sec.

§ 937.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431–1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

§ 937.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the coral reef ecosystem and other natural resources of the waters at Looe Key and to ensure the continued availability of the area for public educational purposes and as a commercial, ecological, research and recreational resource. This area supports a particularly rich and diverse marine biota. The area is easily accessible to the lower Florida Keys and is widely used by boaters, charter boat operators, dive boats, recreational divers and fishermen. Consequently, both present and potential levels of use may result in harm to Looe Key in the absence of long-term planning, research, monitoring and adquate protection.

§ 937.3 Boundaries.

The Sanctuary consists of an area of 5.32 square nautical miles of high sea waters off the coast of the lower Florida Keys, 6.7 nautical miles (12.5 km) southwest of Big Pine Key. The area includes the waters overlaying a section of the submerged Florida reef tract at Looe Key. The precise boundaries are:

Latitude and Longitude Are Furnished to .001 of a Second

Pt. No.	Latitude	Longitude
2-1	24°31'37"	81°26'00"
2-2	24°33'34"	81°26'00"
2-3	24°34'09"	81°23'00"
2-4	24°32'12"	81°23'00"

§ 937.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" means the Assistant Admistrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State or local unit of the government.

(d) "Tropical fish" means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with the coral.

(e) "The Fore Reef" means the area of the well defined "spur and groove" coral reef as delineated by Loran readings 1, 2, 3, 4 as follows:

1. NW 7980–W–13973.7, 7980–Y–43532.7
2. SW 7980–W–13975.4, 7980–Y–43543.4
3. NE 7980–W–13975.0, 7980–Y–43530.1
4. SE 7980–W–13975.4, 7980–Y–43527.7

§ 937.5 Allowed activities.

All activities except those specifically prohibited by Section 937.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions and conditions imposed by any other authority.

§ 937.6 Activities prohibited without a permit.

(a) Unless permitted by the Assistant Administrator in accordance with Section 937.8, or as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary. All prohibitions must be applied consistently with international law.

(1) *Removing or damaging distinctive natural features.* (A) No person shall break, cut or similarly damage or take any coral or marine invertebrate except as an incidental result of anchoring outside the Fore Reef where sand anchoring is encouraged but not required. Divers are prohibited from handling coral or standing on coral formations.

(B) No person shall take, except incidentally to allowed fishing activities, any tropical fish or marine invertebrate.

(C) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no sanctuary. The following constraints also shall be imposed.

(A) No person shall place any anchor on coral within the Fore Reef of the Sanctuary nor allow any chain or rope to enter the Fore Reef in a way that injures any coral. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(B) Watercraft must use mooring buoys, stations or anchoring areas when such facilities and areas have been designated and are available.

(C) Watercraft shall not be operated in such a manner as to strike or otherwise cause damage to the natural features of the Sanctuary.

(D) All watercraft from which diving operations are being conducted shall fly in a conspicious manner, the red and white "divers down" flag.

(3) *Using harmful fishing methods.* (A) No person shall use or place wire fish traps within the Sanctuary.

(B) No person shall place lobster traps within the Fore Reef area of the Sanctuary.

(C) No person shall use pole spears, Hawaiian slings, rubber-powered arbalets, pneumatic and spring loaded guns or similar devices known as spearguns within the Sanctuary.

(D) No person shall use poisons, electric charges, explosives or similar methods within the Sanctuary.

(4) *Removing or damaging distinctive historical or cultural resources.* No person shall remove, damage or tamper with any historical or cultural resources, including cargo pertaining to submerged wrecks.

(5) *Discharges.* No person shall deposit or discharge any materials or substances of any kind except:

(A) Fish or parts and chumming materials.

(B) Cooling water from vessels.

(C) Effluents from marine sanitation devices.

(6) *Markers.* (A) No person shall mark, deface or damage in any way or displace, remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts or other boundary markers installed by the managers or markers placed for the purpose of lobster pot fishing.

(B) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(C) The prohibitions in this Section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 937.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. Procedures are outlined in Subpart D of Part 922 (15 CFR Part 922) of this Chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 937.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under Section 937.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, ATTN: Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as (1) the general profession and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreational, educational or scientific information; (4) the end value of the activity; and (5) such other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this Section, the Assistant Administrator shall seek the views of the Fishery Management Councils and may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be made available to the public.

(f) The permit granted under paragraph (e) may not be transferred without written permission of the Assistant Administrator.

(g) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this Section, in whole or in part, temporarily or indefinitely, if the permit holder (the Holder) has acted in violation of the terms of the permit or of the applicable regulations. Any such action shall be set forth in writing to the Holder, and shall set forth the reason(s) for the action taken. The Holder may appeal the action as provided for in § 937.10.

§ 937.9 Other permits.

All permits, licenses and other authorizations issued pursuant to any other authority remain valid if they do not authorize any activity prohibited by Section 937.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 937.10 Appeals from administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial, or conditioning of any permit under § 937.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal shall be in writing, shall state the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this Section, the Administrator shall notify the permit Applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator shall decide the appeal in accordance with the criteria set in § 937.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the Hearing Officer's recommended decision, if any, as provided in paragraph (c) and such other considerations as deemed appropriate. The Administrator shall notify all interested persons of the decision, and the reason(s) therefor in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such hearing shall normally be held no later

than 30 days following publication of the notice in the Federal Register unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different) and, at the discretion of the Hearing Officer, other interested persons, may appear personally or by counsel at the hearing and submit material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended for a period not to exceed 30 days by the Administrator for good cause, either upon his or her own motion or upon written request from the Appellant or Applicant stating the reason(s) therefor.

[FR Doc. 81-2481 Filed 1-23-81; 3:45 am]
BILLING CODE 3510-08-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6280, 34-17451, 35-21883, 39-607, IC-11558, and IA-746]

Revision of Fee Schedule for Records Services

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its rule relating to fees for records services as reflected in a new service contract. The new contract replaces a prior contract for information dissemination services that expired on September 30, 1980. As of October 1, 1980, the new contract provides for the continuance of services to disseminate filings made with the Commission to interested members of the public.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Edward A. Wilson, FOIA Officer, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-523-5530.

SUPPLEMENTARY INFORMATION: A new services contract that includes but is not limited to the reproduction of public documents in the public reference room in Washington, D.C. and in the Commission's regional office reference rooms in New York City, Chicago and Los Angeles was signed by the Commission on October 1, 1980 with Disclosure, Inc., 5161 River Road, Bethesda, Maryland 20016. This information dissemination services contract is reflected in 17 CFR Part 200. The new fee schedule for services provided to the public is indicated in the following revision. For convenience, Appendix E—Schedule of fees for records services, is being reprinted in its entirety.

Accordingly, Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended by revising § 200.80e to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§ 200.80e Appendix E—Schedule of fees for records services.

Searching and Attestation Services. Locating and making available records requested for inspection or copying (including overhead costs): First one-half hour—No Fee; Each additional one-half hour or fraction thereof—$2.50.

Attestation with Commission Seal (in addition to other fees, if any): $2.00.

Payment for the above services must be made by check or money order payable to: "Treasury of the United States." Address mailed payments to:

Comptroller, Securities and Exchange Commission, Washington, D.C. 20549.

Facsimile Copies of Documents. — Facsimiles of public documents filed with the Commission and retained as hard copy records or as microfiche are provided by a service contractor at rates established by a contract between the contractor and the Commission. All requests for regular service facsimile copies should be directed to the Public Reference Branch, Securites and Exchange Commission, Washington, D.C. 20549. Request for priority services may be directed to the service contractor, or to the Public Reference Branch. Requests for watching services should be directed to the service contractor. Cost estimates with respect to any regular or priority copying job will be supplied upon request by the Public Reference Branch.

Copies, when authorized, will be sent directly to the purchaser by the service contractor unless attestation is requested. The purchaser will be billed by the contractor for the costs of the copies plus postage or other delivery charges, if any. Payment of all copying charges must be made to the contractor, not to the SEC, in the manner specified on the contractor's invoice. The purchaser will be billed separately by the Commission for searching and attestation services, if any, at the rates noted above.

Paper-to-paper fascimile copies may range from 8½"×11" to 14" in size, regardless of the size of the original, and are subject to 25% reduction to accommodate oversized originals if the resulting copies remain legible. If two or more facsimile copies must be made from oversized originals, the customer will match and join the copies and be billed for them at the unit page charge for each copy produce. If facsimile copies are to be certified by the SEC, the copies will have a left margin of least 1 inch. Fiche-to-paper blowback copies will be 8½"×11", including clear 6-point bold type characters if the original paper that was filmed was itself legible.

The following types of dissemination services are available. The stated time for delivery in each case begins to run only after receipt of the material by the contractor; if files cannot immediately be made available by the Commission, the time of shipment will be affected. The contractor maintains files of most materials.

Regular service.—Hard (facsimile) copies of original hard copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after order and material are received by the contractor—each page—$0.10; Minimum charge each order for regular service—$5.00. (Delivery costs are additional; applicable sales taxes are included.)

Priority service.—Hard (facsimile) copies of original hard copies, or from microfiche accessible to the contractor, will be shipped by 4 p.m. of the day following receipt of the order, exclusive of weekends or holidays—each page $0.35; Mimimum charge each order for priority service—$10.00. (Delivery costs and applicable sales taxes are additional.)

Watching service.—Hard (facsimile) whole copies of customer-specified original or originals recieved by the contractor for filming as part of the ordinary maintenance of the contractor's master film file will be shipped by 4 p.m. of the day following contractor receipt of the original(s), exclusive of weekends or holidays—each page—$0.45; Mimimum charge each order for watching service—$25.00. (Delivery costs and applicable sales taxes are additional.)

Public Reference Copying Facilities.—In addition to the demand-order facsimile copying services described above, the service contractor maintains customer operated paper-to-paper and fiche-to-paper copiers in the public reference rooms of the Commission in Washington, D.C., New York City, Los Angeles and Chicago. These machines can be used to make immediate copies of material available for inspection in those offices at a cost of $0.15 per page, with no minimum charge above the $0.15 cost per page. (Sales taxes, when applicable, are additional.) The service contractor will also make paper copies on a highspeed fiche-to-paper copier from fiche retrieved by customers from filings film files located in the Washington, D.C. reference room. The onsite service is intended to provide to the extent possible 5-minute demand service. The cost is $0.20 per page ($0.20 minimum order), plus applicable sales taxes.

Subscription services and microfiche copies.—The contractor offers certain paper or 24X microfiche subscription services pursuant to the contract. The microfiche copies (24X reduction, 60 frames, titled and indexed) and paper copies are offered through a variety of subscription and demand order services. The cost of subscription services varies according to the type of service and volume. Packages currently offered on microfiche and on paper include registration statements and prospectuses under the Securities Act of 1933, registration and listing applications under the Securities Exchange Act of 1934, annual reports to shareholders, definitive proxies and information statements, tender offers and acquisition reports, and filings on Forms 6-K, 8-K, 10-Q, 10-K, 20-F, N-1Q and N-1R, under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Subscriptions may be for specific documents or in various combinations and groupings and may be specified either by company name or by major stock exchanges. Arrangements also may be made to obtain microfiche of individual documents on demand. Demand-order fiche will be shipped by the contractor by the end of the working day following order receipt if master fiche are in the contractor's files, at a cost of $10.00 per document; delivery costs and applicable sales taxes are additional. Finally, various indices of filings may be purchased on subscription from the contractor.

The contractor supplying these services will supply information and price lists upon request. Please address requests for information and all orders for subscription services, priority and watching services, and microfiche copies to: Disclosure, Inc., 5161 River Road, Bethesda, Maryland 20016; telephone (301) 951-1350.

The Commission finds that this revision pertains only to procedural matters and updates certain information contained in the present rule; it is therefore not subject to the provision of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, requiring advance notice and opportunity for comment. Accordingly, it is effective January 26, 1981.

By the Commission.

George A. Fitzsimmons,

Secretary.

January 15, 1981.

[FR Doc. 81-2820 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1300

Rules of Procedure; Radio Free Europe and Radio Liberty

AGENCY: Board for International Broadcasting.

ACTION: Final rulemaking.

SUMMARY: The Board for International Broadcasting (BIB) is adopting these amendments to its regulations in order to clarify the procedures that govern selection and continuation in office of officers of Radio Free Europe and Radio Liberty (RFE/RL, Inc.). Existing regulations expressly provide that appointment of officers and Board members to RFE/RL, Inc. may be made only from among those persons unanimously nominated by the Nominating Committee, of which the Chairman of the BIB shall be an *ex officio* member. These amendments clarify that the Nominating Committee should make its recommendations at least 45 days before the selections are made. More importantly, these amendments clarify that upon expiration of the term of any of the officers specified in paragraph (c) of this section, the incumbent may serve for 90 additional days or until a successor is chosen, whichever is earlier. If a successor is not selected within the 90-day period, the position shall be deemed vacant, and any person holding an officership, the term of which has expired, may no longer serve in that position unless duly elected upon the unanimous recommendation of the Nominating Committee. The by-laws of RFE/RL, Inc. shall be amended to conform to this requirement.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, Suite 430, 1030 15th Street, NW., Washington, D.C. 20005, telephone 202-254-8040.

SUPPLEMENTARY INFORMATION: These regulations are published as final rulemaking without previous publication in proposed form because they are interpretive rules, involve a foreign affairs function and relate exclusively to internal management and personnel matters. Further, a representative from RFE/RL, Inc. has had an opportunity to comment on the proposed change. Therefore, the requirement of publication for proposed rulemaking purposes under 5 U.S.C. 553(b) is not applicable to these regulations.

Therefore Part 1300 of Title 22 of the Code of Federal Regulations is amended by revising § 1300.9(d) to read as follows:

§ 1300.9 Personnel.

* * * * *

(d) The Board Members and officers of RFE/RL, Inc. specified in paragraph (c) of this section, including the Directors of the RFE and RL Divisions, shall be chosen annually by the RFE/RL, Inc. Board of Directors upon recommendation of the Nominating Committee. The Nominating Committee should report its recommendations for Board Members and officers to the RFE/RL, Inc. Executive Committee at least 45 days prior to the date of the RFE/RL, Inc. Board of Directors annual meeting at which such officials are to be chosen. Such officials when chosen shall continue in office only until completion of their respective terms of office except that any such official may continue in office when a successor is not chosen for a period not to exceed 90 days after the end of his term or until a successor is chosen, whichever is earlier. If a successor is not selected within 90 days from the end of the term, the office shall be declared vacant. The RFE/RL, Inc. by-laws shall be amended to conform to this section.

* * * * *

(Pub. L. 93-129; 22 U.S.C. 2873(a)(10))

John A. Gronouski,

Chairman.

[FR Doc. 81-2833 Filed 1-23-81; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1217

[Docket No. 79-11; Notice 5]

Highway Safety Innovative Project Grants Program

AGENCY: National Highway Traffic Safety Administration, (NHTSA) Department of Transportation.

ACTION: Delay of deadline for preapplications.

SUMMARY: In the Federal Register of December 22, 1980, (45 FR 84037), NHTSA set February 1, 1981, as the deadline for preapplications for grants under the Highway Safety Innovative Project Grants Program. The deadline for preapplications is hereby extended to March 1, 1981, to coincide with the application date for related programs of the Department of Transportation.

Issued on January 21, 1981.

Charles F. Livingston,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 81-2823 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 19 and 61

[Order No. 927-81]

Procedures for Implementing the National Environmental Policy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On November 29, 1978, the Council on Environmental Quality (CEQ) promulgated regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA). CEQ required federal agencies to adopt, as necessary, procedures to supplement their regulations. As a result, the Department of Justice and certain subunits have adopted procedures to facilitate compliance with NEPA.

EFFECTIVE DATE: February 25, 1981.

FOR FURTHER INFORMATION CONTACT: Lois J. Schiffer, Chief, General Litigation Section, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, Tel. (202) 633-2704.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, requires all federal agencies to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on proposals for legislation significantly affecting the quality of the human environment and on other major federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) issued regulations to implement the procedural provisons of NEPA (codified at 40 CFR Parts 1500-1508, hereafter referred to by section number), under the direction of Executive Order No. 11991. These regulations require all agencies to prepare supplemental procedures as necessary to implement the regulations (§ 1507.3). The procedures are to be brief and are to contain only information not already specified in the CEQ regulations but which is necessary to facilitate Department compliance with NEPA.

The Department of Justice has endeavored to assure that where NEPA is applicable, its requirements will be met consistently with the goal of reducing paperwork and delay. Major Departmental subunits have reviewed their activities to determine which are covered by NEPA. CEQ has been consulted regularly throughout this process. The Department of Justice has determined that most of its actions do not come within the definition of "major federal actions" invoking the NEPA process. The Department of Justice is primarily engaged in activities in the litigation framework and in giving legal advice and these actions are excluded from the definition of "major federal action" by CEQ regulations (§ 1508.18).

The Bureau of Prisons, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Office of Justice Assistance, Research and Statistics have developed internal procedures to supplement the departmentwide procedures for those activities not conducted elsewhere in the Department which necessitate environmental review. The internal procedures for these components are included for informational purposes in the appendices to this part.

The requirements of 5 U.S.C. 553 (informal rulemaking) and Executive Order No. 12044 (improving government regulations) do not apply to these procedures. The provisions of the Department of Justice and subunit procedures that provide for internal management of NEPA review are exempt under 5 U.S.C. 553(a)(2) and section 6(b)(3) of Executive Order No. 12044. Other provisions interpret the CEQ regulations in the context of Department activities and are therefore exempt under 5 U.S.C. 553(b)(A) and the Department of Justice's understanding of the coverage of the Executive order. These regulations are not "significant" within the meaning of section 2(e) of the Executive order and section III(D) of the Department report on implementation of the Executive order (44 FR 30461).

No significant public comments were received on the procedures as published in proposed form in 44 FR 43751 and 45 FR 45311. They have, therefore, been revised only to the extent suggested by CEQ.

Accordingly, in order to adopt procedures for the Department of Justice to supplement the regulations of the Council on Environmental Quality, 40 CFR Parts 1500-1508, and by virtue of the authority vested in me by 28 U.S.C. 509, 510; 5 U.S.C. 301 and Executive Order No. 11991, I hereby order the following:

1. Part 19 [Removed]

Part 19 of Title 28, Code of Federal Regulations is revoked and removed.

2. A new Part 61, to read as follows, is added to Chapter 1 of Title 28, Code of Federal Regulations:

PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Subpart B—Implementing Procedures.

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order No. 11991.

Subpart A—General

§ 61.1 Background.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on proposals for legislation significantly affecting the quality of the human environment and on other major federal actions significantly affecting the quality of the human environment.

(b) Executive Order No. 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations, 40 CFR Parts 1500–1508, ("The NEPA regulations"). These regulations provide that each federal agency shall, as necessary, adopt implementing procedures to supplement the regulations. The NEPA regulations identify those sections of the regulations which must be addressed in agency procedures.

§ 61.2 Purpose.

The purpose of this part is to establish Department of Justice procedures which supplement the relevant provisions of the NEPA regulations and to provide for the implementation of those provisions identified in 40 CFR 1507.3(b).

§ 61.3 Applicability.

The procedures set forth in this part, with the exception of the appendices, apply to all organizational elements of the Department of Justice. Internal procedures applicable, respectively, to the Bureau of Prisons, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Office of Justice Assistance, Research and Statistics are set forth in the appendices to this part, for informational purposes.

§ 61.4 Major federal action.

The NEPA regulations define "major federal action." "Major federal action" does not include action taken by the Department of Justice within the framework of judicial or administrative enforcement proceedings or civil or criminal litigation, including but not limited to the submission of consent or settlement agreements and investigations. Neither does "major federal action" include the rendering of legal advice.

Subpart B—Implementing Procedures

§ 61.5 Typical classes of action.

(a) The NEPA regulations require agencies to establish three typical classes of action for similar treatment under NEPA. These classes are: actions normally requiring environmental impact statements (EIS), actions normally not requiring assessments or EIS, and actions normally requiring assessments but not necessarily EIS. Typical Department of Justice actions falling within each class have been identified as follows:

(1) *Actions normally requiring EIS.* None, except as noted in the appendices to this part.

(2) *Actions normally not requiring assessments or EIS.* Actions not significantly affecting the human environment.

(3) *Actions normally requiring assessments but not necessarily EIS.* (i) Proposals for major federal action; (ii) proposals for legislation developed by or with the significant cooperation and support of the Department of Justice and for which the Department has primary responsibility for the subject matter.

(b) The Department of Justice shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 61.6 Consideration of environmental documents in decisionmaking.

The NEPA regulations contain requirements to ensure adequate consideration of environmental documents in agency decisionmaking. To implement these requirements, the Department of Justice shall:

(a) Consider from the earliest possible point in the process all relevant environmental documents in evaluating proposals for Department action;

(b) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing Department review processes;

(c) Consider those alternatives encompassed by the range of alternatives discussed when evaluating proposals for Department action, or if it is desirable to consider substantially different alternatives, first supplement the environmental document to include analysis of the additional alternatives;

(d) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

§ 61.7 Legislative proposals.

(a) Each subunit of the Department of Justice which develops or significantly cooperates and supports a bill or legislative proposal to Congress which may have an effect on the environment shall, in the early stages of development of the bill or proposal, undertake an assessment to determine whether the legislation will significantly affect the environment. The Office of Legislative Affairs shall monitor legislative proposals to assure that Department procedures for legislation are complied with. Requests for appropriations need not be so analyzed.

(b) If the Department of Justice has primary responsibility for the subject matter involved and if the subunit affected finds that the bill or legislative proposal has a significant impact on the environment, that subunit shall prepare a legislative environmental impact statement in compliance with 40 CFR 1506.8.

§ 61.8 Classified proposals.

If an environmental document includes classified matter, a version containing only unclassified material shall be prepared unless the head of the office, board, bureau or division determines that preparation of an unclassified version is not feasible.

§ 61.9 Emergencies.

CEQ shall be consulted when emergency circumstances make it necessary to take a major federal action with significant environmental impact without following otherwise applicable procedural requirements under NEPA.

§ 61.10 Ensuring Department NEPA compliance.

The Land and Natural Resources Division shall have final responsibility for ensuring compliance with the requirements of the procedures set forth in this part.

§ 61.11 Environmental information.

Interested persons may contact the Land and Natural Resources Division for information regarding Department Justice compliance with NEPA.

Appendix A—Bureau of Prisons.—Procedures relating to the Implementation of the National Environmental Policy Act

1. Authority: (CEQ Regulations) NEPA, the Environmental Quality Improvment Act of 1970, as amended (42 U.S.C. 4371 et seq.) Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977.)

2. Purpose: This guide shall apply to efforts associated with the leasing, purchase, design, construction, management, operation and maintenance of new and existing Bureau of Prisons facilities as well as the closing of existing Bureau of Prisons institutions. These procedures shall be used by the Regional Facilities Administration staff as well as the Central Office of Facilities Development and Operations staff. Activities concerning Bureau of Prisons compliance with NEPA shall be handled by and coordinated with these staff members and coordinated by Central Office Personnel. (Reference shall be made to Part 1507—Agency Compliance of the CEQ Regulations.)

3. Agency Description: The Bureau of Prisons, a component of the U.S. Department of Justice, is responsible for providing custody and care to committed Federal offenders in an integrated system of correctional institutions across the nation.

The Bureau of Prisons performs its mission of protecting society by implementing the judgments of the Federal courts and safeguarding Federal offenders committed to the custody of the Attorney General.

The administration of the Federal Prison System consists of six divisions. The central office in Washington, D.C., is supplemented by five regional offices located in Atlanta, San Francisco, Dallas, Kansas City, and Philadelphia.

4. (*Reference: § 1501.2(d)(1)—CEQ Regulations*) The Bureau of Prisons shall make available the necessary technical staff to review proposals and prepare feasibility studies for facilities under consideration for possible use as Federal correctional institutions. (*Reference: § 1501.2(d)(2)—CEQ Regulations*) At the appropriate time after project funding approval, the Bureau of Prisons, having identified a preferred general area for a new facility, will inform the members of Congress representing the affected locale of the intent to pursue the establishment of a Federal correctional institution in the area. This activation might include but not be limited to: (1) The construction of a new facility; (2) or Surplus Federal, state, or local facility to the Bureau of Prisons for prior use. The Bureau of Prisons shall advise and inform interested parties concerning proposed plans which might result in implementation of the NEPA regulations. After inital informal contacts have been made, the Bureau of Prisons will with the aid of local area officials, begin to identify desired locations for the proposed new facility. In the event of proposed activation of an existing facility for prison use, the Bureau of Prisons shall seek initial involvement among local officials and advice on alternative courses of action.

In either case, if the issues appear significantly controversial, an informal public hearing will be held to present the issues to the community and seek their involvement in the planning process. Upon completion of the preliminary groundwork described above, the Bureau of Prisons will issue an A-95 letter of intent to (1) either file an EIS; (2) file an EIA; or (3) discontinue the efforts of locating a facility in the proposed area.

5. *Public Involvement: (Reference: Part 1506.6(3)—CEQ Regulations)* Information regarding the policies of the Bureau of Prisons for implementing the NEPA process can be obtained from: Bureau of Prisons Facilities Development and Operations Office, 320 First Street, NW., Washington, D.C. 20534.

6. *Supplemental Statements: (Reference: Part 1502.9(c)(3)—CEQ Regulations)* If it is necessary to prepare a supplement to a Draft or Final Environmental Impact Statement, the supplement shall be introduced into the project administrative record.

7. *Bureau of Prisons Decisionmaking Procedures: (Reference: Part 1501.1 (a) through (e)—CEQ Regulations)* Major decision points likely to involve the NEPA process:

1. Construction of a new Federal correctional institution.

2. Closing of an existing Federal correctional institution.

3. Activation of a surplus facility for conversion to a Federal correctional institution.

4. Significant change from the original mission of a Federal correctional institution.

5. New construction at an existing Federal correctional institution which might significantly impact upon the existing community environment.

When the inclusion of certain voluminous data in environmental documents would prove impractical, the Bureau of Prisons will summarize the data and retain the original material as a part of its administrative record for the project. This material will be made available to the public in a central place to be designated in Environmental Impact Statements, and upon written request or court order copies of specified material will be provided. A charge may be made for copying, in accordance with current Department of Justice gudelines for reproduction of records.

Decisionmakers shall verify the consideration of all available options in the EIS with a comparative analysis of the alternatives to be considered in the decisionmaking process.

8. Those Actions Which Normally Do Require Environmental Impact Statements: *(Reference: § 1507.3(b)(2)(ii)—CEQ Regulations* (1) New Federal correctional institution construction projects.

(2) Acquisition of surplus facilities for conversion to Federal correctional institutions, if the impact upon the quality of the human environment is likely to be significant.

(3) The closing of an existing Federal correctional institution, if that is likely to have a significant impact upon the quality of the human environment.

(4) Significant change from the original mission of a Federal correctional institution when the issue is likely to have an impact upon the quality of the human environment.

(5) New construction at an existing Federal correctional institution which would significantly affect the physical capacity, when the action is likely to have an impact upon the quality of the human environment.

(6) New construction at an existing Federal correctional institution which would significantly impact upon the quality of the community environment.

9. Those Actions Which Normally do not Require Either an Environmental Impact Statement or an Environmental Assessment: *(Reference: Part 1507.3(b)(2)(ii) and Part 1508.4—CEQ Regulations)* (1) Increase or decrease in population of a facility, above or below its physical capacity.

(2) Construction projects for existing facilities, including but not limited to: additions and remodeling; replacement of building systems and components; maintenance and operations, repairs, and general improvements; when such projects do not significantly alter the program of the facility or significantly impact upon the quality of the environment in the community.

10. Those Actions Which Normally Require Environmental Assessments but not Necessarily Environmental Impact

Statements: *(Reference: § 1507.3(b)(2)(iii)—CEQ Regulations)* (1) Acquisition of surplus facilities for conversion to Federal correctional institution.

(2) Construction of additional facilities at an existing institution when the impact on the local environment is not seen to be significant, but when the alteration of programs or operations may be controversial.

(3) The closing of an institution or significant reduction in population of an institution when the impact on the local environment is not seen to be significant.

11. *Emergency Actions: (Reference: Part 1506.11—CEQ Regulations).* After consultation with the Council on Environmental Quality regarding alternative courses of action, the Bureau of Prisons may take action without observing the provisions of the CEQ Regulations and these Bureau of Prisons Procedures in the following cases:

(1) When the replacement of suddenly unavailable local utilities services, and/or resources, due to circumstances beyond the control of the Bureau of Prisons, is vital to the lives and safety of inmates and staff or protection of U.S. Government property.

(2) When unforeseen circumstances, such as greatly increased judicial commitments, suddenly dictate the activation of facilities to house increased numbers of Federal offenders and detainees significantly above the physical capacity of the combined Bureau of Prisons facilities in order to insure the lives and safety of inmates and staff or protection of U.S. Government property.

(3) When the sudden destruction of or damage to institutions dictates immediate replacement in order to protect the lives and safety of inmates and staff and protection of U.S. Government property.

Appendix B—Drug Enforcement Administration Procedures Relating to the Implementation of the National Environmental Policy Act

1. Applicability.

2. Typical Classes of Action Requiring Similar Treatment Under NEPA.

3. Environmental Information.

1. *Applicability.*

This part applies to all organizational elements of the Drug Enforcement Administration [DEA].

2. *Typical Classes of Action Requiring Similar Treatment Under NEPA.*

(a) Section 1507.3(c)(2) in conjunction with § 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

(1) Actions normally requiring EIS	(2) Actions normally not requiring environmental assessments or EIS (Categorical exclusions)	(3) Actions normally requiring environmental assessments but not necessarily EIS
None	Scheduling of drugs as controlled substances	Chemical eradication of plant species from which controlled substances may be extracted.
	Establishing quotas for controlled substances	
	Registration of persons authorized to handle controlled substances.	
	Storage and destruction of controlled substances	
	Manual eradication of plant species from which controlled substances may be extracted.	

(b) For the principal DEA program requiring environmental review, the following chart identifies the point at which the NEPA process begins, the point at which it ends, and the key agency officials or offices required to consider environmental documents in their decisionmaking.

Principal program	Start of NEPA process	Completion of NEPA process	Key officials or offices required to consider environmental documents
Eradication of plant species from which controlled substances may be extracted.	Prepare an environmental assessment.	Final review of environmental assessment or Environmental Impact Statement.	Office of Science and Technology.

(c) The DEA shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action in (a) above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

3. *Environmental Information*

Interested persons may contact the Office of Science and Technology for information regarding the DEA compliance with NEPA.

Appendix C—Immigration and Naturalization Service Procedures Relating to the Implementation of the National Environmental Policy Act

1. *General.* These procedures are published pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.). Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

2. *Purpose.* These procedures shall apply to efforts associated with the leasing, purchase, design, construction, and maintenance of new and existing INS facilities. All activities concerning the Immigration and Naturalization Service's compliance with NEPA shall be coordinated with Central Office Engineering staff.

3. *Agency Description.* The INS administers and enforces the immigration and nationally laws. This includes determining the admissibility of persons seeking entry into the United States and adjudicating requests for benefits and privileges under the immigration and nationality laws. The enforcement actions of INS involve the prevention of illegal entry of persons into the United States and the investigation and apprehension of aliens already in the country who because of inadmissibility at entry or misconduct committed following entry may be subject to deportation.

In carrying out its statutory enforcement responsibilities. the INS is authorized to arrest and detain aliens believed to be deportable and to effectuate removal from the U.S. of aliens found deportable after hearing.

4. *Designation of Responsible Official.* The Chief Engineer, Facilities and Engineering Branch shall be the liasion official for INS with the Council on Environmental Quality, the Environmental Protection Agency, and the other departments and agencies concerning environmental matters. Duties of the Chief Engineer include:

(a) Insuring compliance with the requirements of NEPA and that the actions with respect to the fulfillment of NEPA are coordinated;

(b) Providing for procedural and substantive training on environmental issues, policy, procedures and clearance requirements;

(c) Providing guidance in the preparation and processing of Environmental Impact Statements; and

(d) Participating in policy formulation, as necessary, in the application of the requirements of the National Environmental Policy Act of 1969.

5. *NEPA and INS Planning.* (a) INS will make available to the public proposals and feasibility studies for facilities under consideration for possible use as INS facilities.

(b) Interested parties indentified as such by the local clearinghouse (as established by the Office of Management and Budget Circular No. A-95) will be advised and informed concerning proposed plans which might involve NEPA regulations.

(c) Upon completion of the preliminary groundwork described above, INS will issue an A-95 Letter of Intent to:

(1) File an Environmental Impact Assessement (EIA);

(2) File an Environmental Impact Statement (EIS). (Reference: 1501.2—CEQ Regulations.)

6. *Public Involvement.* Information regarding the policies of INS for implementing the NEPA process can be obtained from: Immigration and Naturalization Service, Facilities and Engineering Branch, 425 I Street NW., Washington, D.C. 20536. (Reference: Part 1506.6(3)—CEQ Regulations.)

7. *Supplemental Statements.* If it is necessary to prepare a supplement to a draft or a Final Environmental Impact Statement, the supplement shall be introduced into the administrative record pertaining to the project. (Reference: Part 1502.9(c)(3)—CEQ Regulations.)

8. *INS Decisionmaking Procedure.* (a) *Policy*—(1) the Chief Engineer will consider all practical means, including the "no-action" alternative and other alternatives to the proposed action, which will enhance, protect, and preserve the quality of the environment, restore environmental quality previously lost, and minimize and mitigate unavoidable adverse effects. He will analyze and study the environment together with engineering, economic, social and other considerations to insure balanced decisionmaking in the overall public interest.

(2) During INS project planning and the related decisonmaking process, environmental effects will be weighed together with the engineering, economic and social and other considerations affecting the public interest.

(b) *Preparation of the environmental impact statements.* (1) Situations where Environmental Impact Statements (EIS) are required are described in section 102(2)(C) of NEPA. EIS constitute an integral of the plan formulation process and serve as a summation and evaluation of the effects, both beneficial and adverse, that each alternative action would have on the environment, and as an explanation and objective evaluation of the plan which is finally recommended.

(2) Should the Chief Engineer determine in assessing the impact of a minor action that an environmental statement is not required, the determination to that effect will be placed in the project file. This negative determination shall be made available to the public as required in § 1506.6 of the CEQ regulations and shall include a statement of the facts and the basis for the decision.

(3) When inclusion of certain voluminous data in an EIS would prove to be impractical, INS will summarize the data and retain the original material as a part of its administrative record for the project. This material will be made available to the public in a central place to be designated in the EIS, and upon written request or court order, copies of specified material will be provided. A charge for the reproduction of records may be made in accordance with current Department of Justice guidelines. (Reference: Part 1505 CEQ Regulations.)

9. *Actions Which Normally Do Require Environmental Impact Statements:* (a) Construction of a new INS facility which would have a significant impact upon the environment.

(b) Construction of a new addition to an existing INS facility which would significantly affect the physical capacity and which would have a significant impact upon the environment. (Reference: § 1507.3(b)(2)(i)—CEQ Regulations.)

10. *Actions Which Normally Do Not Require Either An Environmental Impact Statement Or An Environmental Assessment:* (a) Construction projects for existing facilities including but not limited to: Remodeling; replacement of building systems and components; maintenance and operations repairs and general improvements when such projects do not significantly alter the intitial occupancy and program of the facility or significantly impact upon the environment.

(b) Increase or decrease in population of a facility within its physical capacity. (Reference: Part 1507.3(b)(2)(ii) and Part 1508.4—CEQ Regulations.)

11. *Actions Which Normally Require An Environmental Assessment But Not Necessarily Environmental Impact Statements:*

(a) Construction of a new addition to an existing INS facility which may affect the physical capacity and may have some impact upon the environment.

(b) Closing of an INS facility which may have some impact on the environment. (Reference: § 1507.3(b)(2)(iii)—CEQ Regulations.)

Appendix D—Office of Justice Assistance, Research, and Statistics Procedures Relating to the Implementation of the National Environmental Policy Act

1. Authority.

These procedures are issued pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*, Regulations of the Council on Environmental Quality, 40 CFR Part 1500, *et seq.*, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, March 24, 1977.

2. Purpose.

It is the purpose of these procedures to supplement the procedures of the Department of Justice so as to insure compliance with NEPA. These procedures supersede the regulations contained in 28 CFR Part 19.

3. Agency description.

The Office of Justice Assistance, Research, and Statistics (OJARS) assists State and local units of government in strengthening and improving law enforcement and criminal justice by providing financial assistance and funding research and statistical programs. OJARS will coordinate the activities and provide the staff support for three Department of Justice Federal financial assistance offices: the Law Enforcement Assistance Administration, the National Institute of Justice, and the Bureau of Justice Statistics. Each of the assistance offices has the authority to award grants, contracts and cooperative agreements pursuant to the Justice System Improvement Act of 1979, Pub. L. 96-157 (December 27, 1979).

Subpart B—Implementing Procedures

4. Typical classes of action undertaken.

(a) Actions which normally require an environmental impact statement.

(1) None.

(b) Actions which normally do not require either an environmental impact statement or an environmental assessment.

(1) The bulk of the funded efforts; training programs, court improvement projects, research, and gathering statistical data.

(2) Minor renovation projects or remodeling.

(c) Actions which normally require environmental assessments but not necessarily environmental impact statements.

(1) Renovations which change the basic prior use of a facility or significantly change the size.

(2) New construction.

(3) Research and technology whose anticipated and future application could be expected to have an effect on the environment.

(4) Implementation of programs involving the use of chemicals.

(5) Other actions in which it is determined by the Administrator, Law Enforcement Assistance Administration; the Director, Bureau of Justice Statistics; or the Director, National Institute of Justice, to be necessary and appropriate.

5. Agency procedures.

An environmental coordinator shall be designated in the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, and in the National Institute of Justice. Duties of the environmental coordinator shall include:

(a) Insuring that adequate environmental assessments are prepared at the earliest possible time by applicants on all programs or projects that may have a significant impact on the environment. The assessments shall contain documentation from independent parties with expertise in the particular environmental matter when deemed appropriate. The coordinator shall return assessments that are found to be inadequate.

(b) Reviewing the environmental assessments and determining whether an Environmental Impact Statement is required or preparing a "Finding of No Significant Impact."

(c) Coordinating the efforts for the preparation of an Environmental Impact Statement consistent with the requirements of 40 CFR Part 1502.

(d) Cooperating and coordinating efforts with other Federal agencies.

(e) Providing for agency training on environmental matters.

6. Compliance with other environmental statutes.

To the extent possible an environmental assessment, as well as an environmental impact statement, shall include information necessary to assure compliance with the following:

Fish and Wildlife Coordination Act, 16 U.S.C. 661, *et seq.;* the National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.;* Flood Disaster Protection Act of 1973, 42 U.S.C. 400, *et seq.;* Clean Air Act and Federal Water Pollution Control Act, 42 U.S.C. 1857, *et seq.;* 33 U.S.C. 1251, *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300, *et seq.;* Wild and Scenic Rivers Act, 16 U.S.C. 1271, *et seq.;* the Coastal Zone Management Act of 1972, 16 U.S.C. 1451, *et seq.;* and other environmental review laws and executive orders.

7. Actions planned by private applicants or other non-Federal entities.

Where actions are planned by private applicants or other non-Federal entities before Federal involvement:

(a) The Policy and Management Planning Staff, Office of Criminal Justice Programs, LEAA, Room 1158B, 633 Indiana Ave., Washington, D.C. 20531, Telephone: 202/724–7659, will be available to advise potential applicants of studies or other information foreseeably required for later Federal action;

(b) OJARS will consult early with appropriate State and local agencies and with interested private persons and organizations when its own involvement is reasonably foreseeable;

(c) OJARS will commence its NEPA process at the earliest possible time (Ref. § 1501.2(d) CEQ Regulations).

8. Supplementing an EIS.

If it is necessary to prepare a supplement to a draft or a final EIS, the supplement shall be introduced into the administrative record pertaining to the project. (Ref. § 1502.9(c)(3) CEQ Regulations).

9. Availability of information.

Information regarding status reports on EIS's and other elements of the NEPA process and policies of the agencies can be obtained from: Policy and Management Planning Staff, Office of Criminal Justice Programs, LEAA, Room 1158B, 633 Indiana Avenue, Washington, D.C. 20531, Telephone: 202/724–7659.

Dated: January 15, 1981.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 81–2451 Filed 1–23–81; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2603 and 2607

Amendment To Change Name and Address Regarding Freedom of Information Act and Privacy Act Requests

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: In this document, the Pension Benefit Guaranty Corporation ("PBGC") indicates a change of name and address in the implementing regulations regarding the Freedom of Information Act and the Privacy Act. The change is necessary because of an internal reorganization in PBGC. The effect of this action is to notify the public of the new name and address they should use when making a request or an appeal under either of the above-mentioned acts.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202–254–3010.

SUPPLEMENTARY INFORMATION: As a result of an internal reorganization of the PBGC, the position of Director, Office of Communications, no longer exists. Accordingly, the disclosure officer, who has authority for administering requests under the Freedom of Information Act and the Privacy Act, was changed from the Director, Office of Communications to a designated person in the Office of the Executive Director. There also is a change in the address to which requests and appeals are to be made.

The PBGC's implementing regulations for the Freedom of Information Act published June 3, 1975 (29 CFR Part 2603) and for the Privacy Act published October 3, 1975 (29 CFR Part 2607) contain numerous references to the Office of Communications and Director, Office of Communications. Wherever these titles appear, they should be changed to Office of the Executive Director and Disclosure Officer, Office of the Executive Director. The address for requests and appeals under these regulations should be changed to 2020 K Street, N.W., Washington D.C. 20006.

Because this amendment pertains solely to a procedural matter and because of the need to provide immediate guidance to the public with respect to the location where members of the public may examine records of

the PBGC and make requests pursuant to the Freedom of Information Act and the Privacy Act, the PBGC finds that the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay of effective date are inapplicable.

Accordingly, Chapter XXVI of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

29 CFR Part 2603 is amended as follows:

1. The authority citation for Part 2603 reads as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502, 88 Stat. 1561; Pub. L. 93–406, 88 Stat. 829.

§ 2603.2 [Amended]

2. 29 CFR 2603.2(c) is amended by removing the words "Director of the Office of Communications" and inserting, in their place, "designated official in the Office of the Executive Director."

§ 2603.32 [Amended]

3. 29 CFR 2603.32(a) is amended by removing the words, "Director, Office of Communications" and inserting, in their place, "Disclosure Officer, Office of the Executive Director."

§§ 2603.32 and 2603.39 [Amended]

4. 29 CFR Part 2603 is amended by removing the words, "P.O. Box 7119, Washington, D.C. 20044" and inserting, in their place, the words "2020 K Street, N.W., Washington, D.C. 20006" in the following places:

(a) 29 CFR 2603.32(a); and

(b) 29 CFR 2603.39.

PART 2607—DISCLOSURE AND AMENDMENT OF RECORDS UNDER THE PRIVACY ACT

29 CFR 2607 is amended as follows:

1. The authority citation for Part 2607 reads as follows:

Authority: 5 U.S.C. 552a; Pub. L. 93–406, 88 Stat. 829.

§ 2607.2 [Amended]

2. 29 CFR 2607.2(a) is amended by removing the words "Director of the Office of Communications" and inserting, in their place, "designated official in the Office of the Executive Director."

§§ 2607.3, 2607.4, 2607.6, and 2607.8 [Amended]

3. 29 CFR Part 2607 is amended by removing the words, "Director, Office of Communications" and inserting, in their place, "Disclosure Officer, Office of the Executive Director" in the following places:

(a) 29 CFR 2607.3(a);
(b) 29 CFR 2607.4(a);
(c) 29 CFR 2607.6(a); and
(d) 29 CFR 2607.8(c).

§§ 2607.3, 2607.4, and 2607.5 [Amended]

4. 29 CFR Part 2607 is amended by removing the words, "Office of Communications" and inserting, in their place, "Office of the Executive Director" in the following places:

(a) 29 CFR 2607.3(a);
(b) 29 CFR 2607.4(a);
(c) 29 CFR 2607.5(a); and
(d) 29 CFR 2607.6(a).

§§ 2607.3, 2607.4, 2607.6, 2607.7, and 2607.8 [Amended]

5. 29 CFR Part 2607 is amended by removing the words, "P.O. Box 7119, Washington, D.C. 20044" and inserting, in their place, the words "2020 K Street, N.W., Washington, D.C. 20006" in the following places:

(a) 29 CFR 2607.3(a);
(b) 29 CFR 2607.4(a);
(c) 29 CFR 2607.6(a) and (c);
(d) 29 CFR 2607.7(c); and
(e) 29 CFR 2607.8(a) and (c).

EFFECTIVE DATE: These amendments become effective January 26, 1981.

Issued in Washington, D.C., this 16th day of January, 1980.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 81–2351 Filed 1–23–81; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 79–151]

Inland Waterways Navigation Regulations—Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising certain Inland Waterways Navigation Regulations applicable to the Great Lakes region. Certain applicability provisions have been changed, substituting vessel length for tonnage. Additional changes, primarily editorial, have been made to delete redundant and archaic requirements. The changes enable the regulations to be more clearly understood and more easily enforced.

EFFECTIVE DATE: These regulations are effective on February 25, 1981.

FOR FURTHER INFORMATION CONTACT: Ensign Edward G. LeBlanc, Office of Marine Environment and Systems (G–WWM–2), Room 1608, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–4958 between 7:30 a.m. and 4:30 p.m. Monday through Thursday, except holidays.

SUPPLEMENTARY INFORMATION: On August 25, 1980, the Coast Guard published a proposed rule (45 FR 56365) concerning these revisions. Interested persons were given until October 9, 1980, to submit comments. Four persons commented on the proposed rule. No public hearing was held.

Drafting Information

The principal persons involved in the drafting of these regulations are: Ensign Edward G. LeBlanc, Project Manager, Office of Marine Environment and Systems, and Lieutenant Collin Lau, Project Counsel, Office of the Chief Counsel.

Discussion of the Comments

Two comments concerned § 162.110 *Duluth-Superior Harbor, Minnesota and Wisconsin.* One comment expressed concern for anchorage and speed provisions in Duluth-Superior Harbor. The provisions in 33 U.S.C. 286 and 409 provide adequate guidance in this area. The other comment suggested that § 162.110(b)(1) be changed to prohibit meeting or overtaking of vessels in Duluth-Superior Harbor only when both vessels are greater than 150 feet. The final rule has been revised to reflect this suggestion.

Three comments concerned § 162.125 *Sturgeon Bay and the Sturgeon Bay Ship Canal, Wisconsin.* One comment suggested editorial name changes to the leading and subsequent paragraphs to conform with the U.S. Board for Geographic Names. The name Lake Michigan Ship Canal has been changed to Sturgeon Bay Ship Canal. The other two comments objected to the requirement in § 162.125(b) that all laden vessels be towed through the canal. This inadvertent error has been corrected.

The remaining comment covered § 162.130, anchorage restriction in Waukegan Harbor, Illinois which was deleted. This section was deleted because 33 U.S.C. 409 already prohibits anchoring which obstructs general navigation. The regulation added nothing to the statutory restriction.

Evaluation

The proposed regulations have been evaluated under the Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," dated May 22, 1980 and have been determined to be nonsignificant. An evaluation is not warranted because the expected impact of the regulations is so minimal. This final rule causes no substantial change to the regulations.

In consideration of the foregoing, Part 162 and Part 165 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. By revising § 162.110 to read:

§ 162.110 Duluth-Superior Harbor, Minnesota and Wisconsin.

(a) No vessel greater than 100 feet in length may exceed 8 miles per hour in Duluth-Superior Harbor.

(b) In the Duluth Ship Canal:

(1) No vessel may meet or overtake another vessel if each vessel is greater than 150 feet in length (including tug and tow combinations).

(2) An inbound vessel has the right of way over an outbound vessel.

2. By revising § 162.115 to read as follows:

§ 162.115 Keweenaw Waterway, Michigan.

(a) No vessel greater than 40 feet in length may exceed 8 miles per hour between Lily Pond and Pilgrim Point.

(b) No vessel may use either the Portage River harbor of refuge or the Lily Pond harbor of refuge longer than 24 hours unless given permission to do so by the Captain of the Port.

3. By revising § 162.120 to read as follows:

§ 162.120 Harbors on Lake Michigan.

(a) No vessel greater than 40 feet in length may exceed 8 miles per hour in the harbors of Michigan City, Indiana; St. Joseph, South Haven, Saugatuck, Holland (Lake Macatawa), Grand Haven. Muskegon, White Lake, Pentwater, Ludington, Manistee, Portage Lake (Manistee County), Frankfort, Charlevois, and Petroskey, Michigan.

(b) No vessel greater than 40 feet in length may exceed 4 miles per hour in the harbors of Menominee, Michigan and Wisconsin; Algoma, Kewaunee, Two Rivers, Manitowac, Sheboygan, Port Washington, Milwaukee, Racine, Kenosha and Green Bay, Wisconsin; and Waukegan, Illinois.

4. By revising § 162.125 to read as follows:

§ 162.125 Sturgeon Bay and the Sturgeon Bay Ship Canal, Wisconsin.

(a) In the Sturgeon Bay Ship Canal:

(1) No vessel may exceed 5 miles per hour.

(2) No vessel greater than 150 feet in length (including tug and tow combinations) may come about.

(3) No vessel 65 feet or greater in length (including tug and tow combinations) may either:

(i) Enter or pass through the canal two or more abreast; or

(ii) Overtake another vessel.

(4) No vessel may anchor or moor unless given permission to do so by the Captain of the Port.

(5) Each vessel must keep to the center, except when meeting or overtaking another vessel.

(b) In Sturgeon Bay and the Sturgeon Bay Ship Canal:

(1) Each laden vessel under tow must be towed with at least two towlines. Each towline must be shortened to the extent necessary to provide maximum control of the tow.

(2) Each unladen vessel may be towed with one towline.

(3) No towline may exceed 100 feet in length.

(4) No vessel may tow another vessel alongside.

(5) No vessel may tow a raft greater than 50 feet in width.

Note.—The Corps of Engineers also has regulations dealing with these areas in 33 CFR Part 207.

§ 162.130 [Removed]

5. By removing § 162.130.

6. By revising § 162.145 to read as follows:

§ 162.145 Monroe Harbor, Michigan.

(a) In the lake channel, no vessel greater than 40 feet in length may exceed 10 miles per hour.

(b) In the river channel:

(1) No vessel greater than 40 feet in length may exceed 6 miles per hour.

(2) No vessel may use a towline exceeding 200 feet in length.

7. By revising § 162.150 to read as follows:

§ 162.150 Maumee Bay and River, Ohio.

(a) In Maumee Bay (lakeward of Maumee River Lighted Buoy 49(L/L No. 770)), no vessel greater than 100 feet in length may exceed 12 miles per hour.

(b) In Maumee River (inward of Maumee River Lighted Buoy 49(L/L No. 770)):

(1) No vessel greater than 40 feet in length may exceed 6 miles per hour.

(2) No vessel greater than 100 feet in length (including tug and tow combinations) may overtake another vessel.

8. By revising § 162.155 to read as follows:

§ 162.155 Sandusky and Huron Harbors, Ohio.

(a) In Sandusky Harbor, no vessel greater than 40 feet in length may exceed 10 miles per hour.

(b) In Huron Harbor, no vessel greater than 40 feet in length may exceed 6 miles per hour, except in the outer harbor where no vessel greater than 40 feet in length may exceed 10 miles per hour.

Note.—The Corps of Engineers also has regulations dealing with these areas in 33 CFR Part 207.

9. By revising § 162.160 to read as follows:

§ 162.160 Vermilion, Lorain, Cleveland, Fairport, Ashtabula, and Conneaut Harbors, Ohio.

(a) In Vermilion Harbor, no vessel may exceed 6 miles per hour.

(b) In Lorain, Cleveland, Fairport, Ashtabula, and Conneaut Harbors, no vessel may exceed 6 miles per hour, except in the outer harbors, where no vessel may exceed 10 miles per hour.

Note.—The Corps of Engineers also has regulations dealing with these areas in 33 CFR Part 207.

10. By revising § 162.165 to read as follows:

§ 162.165 Buffalo and Rochester Harbors, New York

In Buffalo and Rochester Harbors, no vessel may exceed 6 miles per hour, except in the outer harbors where no vessel may exceed 10 miles per hour.

Note.—The Corps of Engineers also has regulations dealing with these areas in 33 CFR Part 207.

§ 162.170 [Removed]

11. By removing § 162.170

12. By revising § 162.175 to read as follows:

§ 162.175 Black Rock Canal and Lock at Buffalo, New York.

In the Black Rock Canal and Lock, no vessel may exceed 6 miles per hour.

Note.—The Corps of Engineers also has regulations dealing with these areas in 33 CFR Part 207.

§§ 162.180, 162.185, and 162.190 [Removed]

13. By removing § 162.180.

14. By removing § 162.185.

15. By removing § 162.190.

PART 165—SAFETY ZONES

16. By adding a new § 165.902 to read as follows:

§ 165.902 Niagara River at Niagara Falls, New York.

(a) The following is a Safety Zone—The United States waters of the Niagara River from the crests of the American and Horseshoe Falls, Niagara Falls, New York to a line drawn across the Niagara River from the downstream side of the mouth of Gill Creek to the upstream end of the breakwater at the mouth of the Welland River.

(33 U.S.C. 1221, 33 U.S.C. 1223, 33 U.S.C. 1231; 49 CFR 1.46)

Dated: January 13, 1981.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 81-2473 Filed 1-23-81, 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[A-2; FRL 1731-2]

State and Federal Administrative Enforcement of Implementation Plan Requirements After Statutory Deadlines; Delayed Compliance Order for Atlantic City Electric Company, Pennsville, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA hereby issues an Order under Section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* ("the Act"), allowing the Atlantic City Electric Company ("Atlantic Electric") to burn coal in Deepwater Generating Station Unit Number 8 in Pennsville, New Jersey and requiring compliance with air pollution requirements under the New Jersey State Implementation Plan by October 1, 1983. This Order is a part of the federally-approved New Jersey Implementation Plan. Compliance by Atlantic Electric with the Order will insulate it from further federal enforcement action under Section 113 of the Act and from citizen enforcement action under Section 304 of the Act for violations of the regulation covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on January 26, 1981.

ADDRESSES: The Administrative Order and supporting materials are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. Environmental Protection Agency, Region II, General Enforcement Branch, Room 437, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Samuel P. Moulthrop, Esq., Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-1196.

SUPPLEMENTARY INFORMATION: On Thursday, November 6, 1980 the Regional Administrator of EPA's Region II published in the **Federal Register**, 45 FR 73699, a notice setting forth the provisions of a proposed administrative Order to the Atlantic City Electric Company ("Atlantic Electric") pursuant to Section 113(d)(5) of the Act. The notice solicited public comment and offered the opportunity to request a public hearing on the proposed Order.

Atlantic Electric owns and operates an electric generating station in Pennsville, New Jersey, known as the Deepwater Generating Station. The Order addresses particulate and smoke emissions from Unit Number 8 at the Deepwater Generating Station, which are subject to N.J.A.C. 7:27-3.1 *et seq.* and 7:27-4.1 *et seq.* The Order limits the emissions of particulate matter and the opacity of smoke emissions and is part of the federally-approved State Implementation Plan. The Order requires final compliance with the above-cited regulations by October 1, 1983 and the source has consented to its terms.

This Order will allow Atlantic Electric to convert Deepwater Unit Number 8 to the use of coal while it is installing air pollution control equipment which is capable of complying with the opacity and particulate emission limitations in the above-cited regulations. The Order contains interim emission reduction requirements, specifies emission limitations and coal pollutant characteristics, and requires monitoring and reporting of air quality and air pollutant emissions data. The Order satisfies the requirements of Section 113(d)(5) of the Act.

Section III, E of the Order establishes a limitation on the opacity of emissions from Deepwater Unit 8. Prior to proposal of the Order by EPA the New Jersey Department of Environmental Protection ("NJDEP") requested that this Order limit the opacity of emissions, as well as establish other emission and operating limitations, as a condition of issuing the Order to Atlantic Electric. EPA considered the NJDEP request to be appropriate and included an opacity provision. Section III, E, as proposed on November 6, 1980, has been modified by the addition of a new paragraph. The addition allows EPA to establish a more stringent opacity limitation in the event it determines, upon observation of actual operating conditions, that a more stringent limitation can be met and that it is reasonable and practicable to do so. Section III, E reflects the practical difficulty of establishing an opacity limitation for this unit prior to the conversion to coal by permitting some flexibility to modify the opacity limitation after the Order is issued. Other language, clarifying the procedures for altering the opacity limitation, has also been added to this Section. Both Atlantic Electric and the NJDEP have consented to Section III, E.

Comments were received from the South Jersey Gas Company and the Township of Pennsville, New Jersey. The South Jersey Gas Company commented that natural gas in sufficient quantities was available to Atlantic Electric in the event it did not burn coal at Deepwater Unit 8. However, this commentor did not argue that the DCO should not be issued. Section 113(d)(5) of the Act is intended to permit a source to convert to coal burning from the use of oil or natural gas. It does not contemplate denial of a DCO where an energy source other than coal is available. Such an interpretation would directly contradict the purpose of Section 113(d)(5). Consequently, EPA does not believe the availability of natural gas to be a relevant criteria to base approval or denial of this DCO.

The Township of Pennsville, New Jersey expressed concern about the increase in particulate emissions resulting from the coal conversion. EPA believes that the DCO adequately addresses particulate emissions and the impact of particulate emissions on ambient air quality. First, it should be noted that the increase in particulate emissions over present levels allowed by the State Implementation Plan ("SIP") will be temporary. Air pollution control equipment, required to be installed under the DCO, will be operational and in compliance with the SIP by October 1, 1983. In addition, interim requirements impose stringent conditions on the operation of Deepwater Unit 8. These interim requirements for particulate emissions, ash and sulfur content of coal, and maintenance will assure that particulate emission increases will be minimized. Furthermore, existing ambient air quality data and dispersion modelling analysis demonstrate that no national primary ambient air quality standard

will be violated in the air quality control region in which the source is located. EPA finds that the requirements of Section 113(d)(5) have been satisfied.

Compliance by Atlantic Electric will preclude further federal enforcement action under Section 113 of the Act for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) will be similarly precluded.

In consideration of the foregoing, 40 CFR Chapter 1, is amended as follows:

1. By adding the following entry to the table in 40 CFR § 55.650:

Source	Location	Order No.	Date of FEDERAL REGISTER proposal	SIP regulation involved	Final compliance date
Atlantic City Electric Co.	Pennsville, N.J.	00109	Nov. 6, 1980..	N.J.A.C. 7:27–3.1, *et seq.*; 7:27–4.1, *et seq.*	Oct. 1, 1983.

Dated: January 16, 1981.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

The text of the order is set forth below. The order will not appear in the Code of Federal Regulations.

United States Environmental Protection Agency, Region II

Order

Index No. 00109.

In the Matter of Atlantic City Electric Company (Deepwater Unit 8).

Delayed Compliance Order

This order is issued pursuant to Subsection 113(d)(5) of the Clean Air Act (the "Act"), as amended, 42 U.S.C. § 7413(d). The order contains a schedule for compliance, interim requirements, monitoring and reporting requirements, and satisfies the other requirements of this Subsection of the Act. Public notice has been provided in accordance with Subsection 113(d)(1) of the Act, and a copy of this order has been provided to the Governor of the State of New Jersey.

Findings

The Atlantic City Electric Company ("the Company") owns and operates an electrical generating station, known as the Deepwater Station, located in Pennsville, New Jersey. The Station contains six generating units. On December 21, 1979, the Economic Regulatory Administration of the United States Department of Energy issued to the Company a proposed prohibition order affecting Unit 8 at the Deepwater Station ("Deepwater Unit 8"). See 45 FR 72–73 (January 2, 1980). This proposed prohibition order was issued pursuant to authority granted the Secretary of Energy under Subsection 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8341(b), and regulations promulgated thereunder. When made final, this prohibition order will prohibit the Company from burning natural gas or petroleum as a primary energy source in Deepwater Unit 8.

If Deepwater Unit 8 were converted to burn coal before additional pollution abatement equipment is installed, it would no longer be in compliance with the following requirements in Chapter 27 of Title 7 of the New Jersey Administrative Code ("N.J.A.C."): (1) Subchapter 3, Control and Prohibition of Smoke from Combustion of Fuel, (N.J.A.C. 7:27–3.1 *et seq.*), and (2) Subchapter 4, Control and Prohibition of Solid Particles from Combustion of Fuel, (N.J.A.C. 7:27–4.1 *et seq.*), both as last amended on October 12, 1977. These requirements are part of the federally-approved New Jersey State Implementation Plan (the "New Jersey SIP").

On March 17, 1980, the Company formally requested that EPA issue on order permitting delayed compliance with the above-cited New Jersey SIP requirements by Deepwater Unit 8. Such an order would permit the Company to burn coal in Deepwater Unit 8 during the period in which new pollution control equipment is being installed on that unit without being subject to civil or criminal enforcement proceedings under the Act. Deepwater Unit 8 is located in the Metropolitan Philadelphia Interstate Air Quality Control Region. This air quality control region includes portions of the States of Delaware and New Jersey and portions of the Commonwealth of Pennsylvania. The national primary ambient air quality standard for particulate matter is not being exceeded in this air quality control region.

After a thorough investigation of the information obtained from all sources, including public comment, the Administrator of EPA has determined that the emission limitations, coal characteristics, and other enforceable measures contained in the order below satisfy the requirements of Subsection 113(d)(5)(B) of the Act. Further pursuant to Subsection 113(d)(5)(B), the Administrator has determined that compliance with the requirements of this order will assure that during the period of the order before final compliance is achieved, the burning of coal in Deepwater Unit 8 will not result in emissions that will cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

Pursuant to Subsection 113(d)(6) of the Act, the Administrator has determined that the schedule for compliance set forth below is as expeditious as practicable.

Finally, pursuant to Subsection 113(d)(7) of the Act, the order provides that Deepwater Unit 8 shall use the best practicable system of continuous emissions reduction as determined by the Administrator taking into account the requirements with which the unit must ultimately comply, during the period of said order. In addition, the order provides that Deepwater Unit 8 shall comply with such interim requirements as the Administrator has determined are reasonable and practicable, including (1) such measures as are necessary for the unit to comply with the requirements of the New Jersey SIP insofar as it is able to do so, and (2) such measures as are necessary for the avoidance of imminent and substantial endangerment to health of persons. The Administrator has determined that Deepwater Unit 8 cannot achieve final compliance with the requirements of N.J.A.C. 7:27–3.1 *et seq.* and 7:27–4.1 *et seq.* prior to December 31, 1980 and consequently, pursuant to Subsection 113(d)(5)(A) of the Act, issues this order, which provides an additional period as specified by the terms of this order for the Company to come into compliance.

Order

Therefore, it is hereby ordered that:

I. The Company shall comply with the following schedule in order to bring emissions from Deepwater Unit 8 into compliance with N.J.A.C. 7:27–3.1 *et seq.* and 7:27–4.1 *et seq.*:

A. Not later than September 1, 1980 the Company shall enter into a contract with an architect and/or engineer for the design and installation of a new continuous particulate emission control system;

B. Not later than March 1, 1981 the Company shall enter into a contract for the acquisition of a new particulate control device;

C. Not later than November 1, 1981 the Company shall begin on-site construction or installation of such continuous particulate emission control system;

D. Not later than July 1, 1983 the Company shall complete on-site construction or installation of such system;

E. Not later than October 1, 1983 emissions from Deepwater Unit 8 shall be in full compliance with N.J.A.C. 7:27–3.1 *et seq.*, 7:27–4.1 *et seq.*, and 7:27–8.1 *et seq.*; and

F. Not later than October 1, 1983 the Company shall perform emission tests in accordance with the applicable testing method set for in N.J.A.C. 7:27B–1.1 *et seq.* (Air Test Method I), and submit reports of said tests to EPA.

II. With respect to the schedule increments set out in paragraph I, hereinabove, the Company shall notify the Director, Enforcement Division, EPA Region II within ten (10) days after each incremental requirement has been satisfied, or within ten (10) days after the final date set for achieving each such requirement if such requirement has not been achieved.

III. During the time period the ORDER is in effect, the Company's Deepwater Unit 8 shall

comply with the following interim requirements:

A. The Company shall not commence burning of coal at Deepwater Unit 8 until such time as the existing dust collector on Deepwater Unit 8 is refurbished as designed to meet the interim particulate emission limitation as set forth in subparagraph C, *infra*, and such equipment, as refurbished, is operational;

B. Deepwater Unit 8 shall not burn coal with a monthly average ash content exceeding five and six-tenths (5.6) pounds of ash per million British Thermal Units (BTU);

C. Deepwater Unit 8 shall not emit in excess of 0.96 pounds of particulate matter per one million BTU gross heat input; compliance with this interim emission limitation will be determined by emissions tests conducted in accordance with Appendix A to 40 CFR Part 60 (1979);

D. The company shall comply with the limitation on the sulfur content of coal set forth in N.J.A.C. 7:27–10.2(c)(2) and shall not seek or obtain any variance, authorization, or other approval to burn coal with a higher sulfur content.

E. The Company shall comply with the following requirements concerning the opacity of emissions from Deepwater Unit 8:

1. Except for a period of six minutes in any consecutive thirty-minute period, the opacity of emissions from Deepwater Unit 8 shall not exceed 40%; provided, however, that this interim opacity limitation shall not become effective during the first seventy (70) days (exclusive of those days in which the unit is out of operation or does not burn coal) after Deepwater Unit 8 is converted to coal and returned to full power operation. If the Company determines that the Deepwater Unit 8 is unable to comply with this interim opacity limitation while burning coal, the Company may request EPA Region II to approve an interim opacity limitation greater than that provided herein. Should the Company make such a request, no enforcement action under the Act shall be brought against the Company or its officers, directors, or employees for any violation of this interim opacity limitation that occurs during the period after the date such request is submitted to EPA and before EPA takes final action in approving or denying such request by publishing appropriate notice in the **Federal Register**. EPA's action in approving or denying any such request shall be subject to review pursuant to § 307 of the Act.

2. In the event EPA Region II determines, after taking into account the opacity of emissions from Deepwater Unit 8 [as observed during representative meteorological and operating conditions] and other relevant factors, (1) that Deepwater Unit 8 is able to comply with an opacity limitation more stringent than the interim opacity limitation set forth in subparagraph E.1. while burning coal and (2) that it would be reasonable and practicable for Deepwater Unit 8 to comply with such more stringent interim opacity limitation, EPA Region II may establish such more stringent opacity limitation, which shall thereafter apply to Deepwater Unit 8 for so long as this ORDER remains in effect. Before establishing any new interim opacity limitation, however, EPA Region II shall notify the Company in writing of this proposed determination and shall provide the Company with an opportunity to submit written comments on that proposed determination. Any new interim opacity limitation established pursuant to this subparagraph shall become effective upon publication in the **Federal Register**. EPA's action in establishing any such new opacity limitation shall be subject to review pursuant to § 307 of the Act.

3. Notwithstanding the requirements of subparagraph E.1, if EPA Region II determines that meteorological conditions are such that the opacity of emissions from Deepwater Unit 8 interferes with vehicular traffic on the Delaware Memorial Bridge, or causes or contributes to a safety hazard on said Bridge, and EPA so notifies the Company, the Company shall reduce the opacity of emissions from Deepwater Unit 8 for so long as necessary to alleviate the interference or hazard.

F. The Company shall implement the following maintenance plan:

1. At least once per eight-hour shift, the Company shall (a) inspect the ash valves and valve actuators on the dust collector to see if they function properly and (b) inspect the fly ash hoppers for leakage. Should any such malfunction or leakage significantly impair the effectiveness of the air pollution control device, action to correct such malfunction or leakage shall be initiated within twenty-four (24) hours. The Company shall maintain records of inspections and of any corrective action taken.

2. During each boiler outage extending more than six (6) days, the Company shall inspect all cyclones, inlet vanes, tricones, and ash vacuum lines for structural integrity. Those components which exhibit excessive wear shall be replaced during the same boiler outage, if spare parts are available. If spare parts are not available, said components which exhibit excessive wear shall be replaced as soon thereafter as is practicable. In the event that spare components are not available, a report shall be filed with EPA Region II identifying those components which will be replaced and the scheduled replacement date. The Company shall maintain records of inspections and of any corrective action taken.

IV. The Company is not relieved by this ORDER from compliance with any requirement imposed by EPA, and/or the courts pursuant to Section 303 of the Act.

V. The period of effectiveness of this ORDER shall not include any period of time in which (1) a national ambient air quality standard for particulate matter is being exceeded in the Metropolitan Philadelphia Air Quality Control Region and (2) the EPA finds that the requirements of Section 113(d)(5)(D) (i) through (iii) are not satisfied. During such periods of time, if any, full compliance with standards and limitations of the New Jersey SIP (excluding this ORDER) shall be required by the Company and violations of said SIP shall be subject to enforcement action under Section 113 of the Act.

VI. The Company shall comply with the following monitoring, recordkeeping, and reporting requirements on or before the dates specified below.

A. Ambient Air Quality Monitoring

1. Within thirty (30) days after the effective date of the ORDER, the Company shall submit to EPA Region II a proposal which is satisfactory to EPA Region II for an ambient air quality monitoring network in the vicinity of Deepwater Unit 8 from which the Company will collect ambient air quality data. Said network shall include monitors capable of measuring total suspended particulate concentrations. The monitors must meet all EPA siting criteria and reference methods. The proposal shall specify sampling procedures.

2. Within one-hundred and twenty (120) days after the effective date of the order or thirty (30) days after Deepwater Unit 8 commences coal-fired operation, whichever date is later, the Company shall begin collecting data from the EPA approved network.

B. Emissions Testing

1. Within sixty (60) days (exclusive of those days during which Deepwater Unit 8 is out of operation or does not burn coal) after Deepwater Unit 8 is converted to coal and returned to full power operation, the Company shall perform tests of particulate emissions from Deepwater Unit 8. The Company shall provide written notice to EPA Region II at least twenty-five (25) days prior to the scheduled test date. The Company shall schedule a meeting to discuss testing protocol to be held at least thirty (30) days prior to the test. The Company shall provide EPA Region II with a summary of the test results within thirty (30) days after completion of such tests and a complete test report containing all information pertinent to the performance and results of said tests within sixty (60) days after completion of such tests.

2. No later than April 1, 1982 the Company shall perform additional tests of particulate emissions from Deepwater Unit 8. The Company shall provide EPA Region II with a summary of the test results within thirty (30) days after completion of such tests and a complete test report containing all information pertinent to the performance and results of such tests within sixty (60) days after completion of such tests.

3. EPA may require additional particulate emissions tests at such other times as it deems appropriate.

4. Interim emission tests and emission rate calculations required to be performed pursuant to this subparagraph shall be performed in accordance with Appendix A to 40 CFR Part 60.

C. Opacity Monitor

Within ninety (90) days after the effective date of this order the Company shall install and commence operation of an instrument which conforms with Performance Specification I in Appendix B to 40 CFR Part 60 (1979) and which continuously monitors the opacity of emissions from Deepwater Unit 8. Said monitor shall be operated during the period in which this order remains in effect.

D. Recordkeeping and Reporting

1. The Company shall keep monthly records both of air quality monitoring data from the EPA-approved monitoring network

and of particulate emissions from Deepwater Unit 8. The Company shall submit copies of these records to EPA Region II within twenty (20) days of the end of each calendar month.

2. The records of emissions shall detail daily emissions from Deepwater Unit 8 and shall at a minimum include:

a. An estimate of the amount of fuel consumed for each day of the preceding month;

b. An analysis of representative shipments of fuel to include sulfur content, high heating value and ash content;

c. Calculated daily particular emissions from Deepwater Unit 8 derived by use of emission test results adjusted for variations in fuel consumption and fuel analysis.

3. The strip chart recordings of the opacity readings from the monitor described in subparagraph VI.C., *supra,* shall be kept on file at the Deepwater Generating Station during the period this order is in effect and shall be available for inspection by EPA Region II during this period.

4. If the air quality monitoring data collected by the Company pursuant to subparagraph VI.A., *supra,* indicate that a national primary ambient air quality standard for particulates is being exceeded in the area, the Company shall notify the Director, Enforcement Division, EPA, Region II of such occurrence by telephone or letter or other means, within five (5) working days of the collection of such data.

5. Within ninety (90) days of the effective date of this order, the Company shall submit to EPA Region II for approval the methods, procedures, and devices by which the Company intends to obtain, record, and report the information required by subparagraph VI.D.2., *supra.*

VII. Force Majeure

A. If any event occurs which causes or may cause delays in the achievement of any provision of this order, the Company shall within twenty (20) days of the occurrence of such event, notify EPA Region II in writing of the delay or anticipated delay, as appropriate, describing the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay. The Company shall adopt all reasonable measures to prevent or minimize any such delay. Failure by the Company to comply with the notice requirements of this subparagraph shall render this paragraph void and of no effect as to the particular event involved.

B. If the Company is unable to comply with any deadline or time limit set forth in Paragraph I. or Subparagraphs VI.A., VI.B., or VI.C., *supra,* and such failure has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of the Company, then said deadline or time limit shall be extended for a period no longer than the delay resulting from such circumstances.

C. The burden of proving that any delay is caused by circumstances beyond the control of the Company and the length of the delay attributable to such circumstances shall rest with the Company. Increased costs or expenses associated with the implementation of actions called for by this order shall not be considered circumstances beyond the control of the Company for purposes of this Paragraph. Delay in achievement of one deadline or time limit under this order shall not necessarily justify or excuse delay in achievement of subsequent deadlines or time limits under this order.

VIII. Nothing herein shall affect the responsibility of the Company to comply with state, local, or other federal law or regulations.

IX. The Company is hereby notified that its failure to achieve final compliance at Deepwater Unit 8 with N.J.A.C. 7:27–3.1 *et seq.,* 7:27–4.1 *et seq.,* and 7:27–8.1 *et seq.* by October 1, 1983, may result in a requirement to pay a noncompliance penalty under Section 120 of the Act. Such requirement may be imposed at an earlier date, as provided by Subsection 113(d) and Section 120 of the Act, either in the event that this order is terminated as provided in Paragraph X, *infra,* or in the event that any requirement of this order is violated as provided in Paragraph XI, *infra.* In any event, the Company will be formally notified of its noncompliance pursuant to Subsection 120(b)(3) and any regulations promulgated thereunder.

X. This order shall be terminated in accordance with Subsection 113(d)(8) of the Act if the Administrator or his designee determines on the record, after notice and hearing, that an inability of Deepwater Unit 8 to burn coal and comply with the N.J.A.C. 7:27–3.1 *et seq.* and 7:27–4.1 *et seq.* no longer exists.

XI. Violation of any requirement of this order may result in one or more of the following actions:

A. Enforcement of such requirement pursuant to Subsection 113 (a), (b), or (c) of the Act;

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of the New Jersey SIP in accordance with the preceding subparagraph; or

C. Notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

XII. This order is effective upon publication of final approval in the Federal Register.

Dated: January 16, 1981.

Douglas M. Costle,

Administrator, U.S. Environmental Protection Agency.

Consent

The undersigned, having full authority to represent the Atlantic City Electric Company, has read the foregoing order, and consents to both its issuance and its terms.

Dated: January 2, 1981.

E. H. Huggard,

Senior Vice President of Operations for Atlantic City Electric Company.

[FR Doc. 81–2638 Filed 1–23–81; 8:45 am]

BILLING CODE 6560–38–M

40 CFR Part 123

[FRL 1724–7]

Interim Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the content of components A and B of phase II interim authorization for State hazardous waste programs under RCRA.

SUMMARY: Elsewhere in today's Federal Register, EPA is promulgating amended regulations for granting Phase II Interim Authorization to State hazardous waste programs under Section 3006(c) of the Resource Conservation and Recovery Act (RCRA), as amended. These regulations are contained in 40 CFR 123 Subpart F. In these amended regulations EPA indicates that it will separately announce the effective date and content of each of the components of Phase II of interim authorization. This notice explains the content and effective date of the first and second components of Phase II Interim Authorization. The first component (Component A) corresponds to the Federal regulations for permitting the storage and treatment of hazardous waste in tanks, surface impoundments, and waste piles, and for permitting the use and management of containers of hazardous waste. The second component (Component B) corresponds to Federal regulations for permitting the treatment of hazardous waste in incinerators. States may commence the Phase II Component A and B Interim Authorization application process with this announcement.

FOR FURTHER INFORMATION CONTACT: Dr. John Skinner, Director, State Programs and Resource Recovery Division, 401 M St. SW., Washington, DC 20460 (202) 755–9107.

FOR FURTHER INFORMATION ON IMPLEMENTATION CONTACT: Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203 (617) 223–5777.

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, N.Y. 10007 (212) 264–0504/5

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106 (215) 597–0980

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365 (404) 881–3016

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6148

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270 (214) 767-8941
Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106 (816) 347-3307
Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203 (303) 837-2221
Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105 (415) 556-4606
Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Background

EPA promulgated regulatory requirements for the authorization of State hazardous waste management programs under Section 3006(c) of RCRA on May 19, 1980 (45 FR 33384 et seq.). EPA is promulgating amendments to those requirements elsewhere in today's **Federal Register** because some of the Subparts of the Federal regulations containing standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 264) will be promulgated at different times, rather than in one single promulgation as previously anticipated. The amended State program authorization procedures enable States to apply for Interim Authorization for the Phase II regulations in components corresponding to the Federal Part 264 standards.

The amendments to the requirements for authorization of State hazardous waste programs provide that EPA will announce the effective date, and content of each component of Phase II of Interim Authorization in a **Federal Register** notice. Specifically, this notice is to list:

- The categories of facilities (e.g., tanks) coverd in the component;
- The facility standards under Part 264 covered in the component;
- The permit requirements and procedures under Part 122 and 124 covered in the component; and
- Any other standards or regulations in Parts 261, 262, 263, and 265 for which a State seeking Phase II Interim Authorization should demonstrate substantial equivalence in its program.

The following section of this Notice identifies these items for the first two components of Phase II Interim Authorization.

II. Content of Components A and B of Phase II of Interim Authorization

In order to receive Interim Authorization for Phase II, Component A, a State must demonstrate, pursuant to 40 CFR § 123.129, that its program is substantially equivalent to the Federal regulations listed in Table A, including all amendments to these regulations that have been promulgated on or before the date of this notice. States receiving Interim Authorization for Phase II, Component A will be authorized to administer a permit program for the use and management of hazardous waste in containers and the storage and treatment of hazardous waste in tanks, surface impoundments and piles.

In order to apply for Interim Authorization for Phase II, Component B, a State must also apply for, or have received, Interim Authorization for Phase II, Component A. In order to receive Interim Authorization for Phase II, Component B, a State must demonstrate, pursuant to 40 CFR § 123.129, that its program is substantially equivalent to the Federal regulations listed in Table B, including all amendments to these regulations that have been promulgated on or before date of this notice. States receiving Interim Authorization for Phase II, Component B will be authorized to administer a State permit program for hazardous waste incinerators.

In order to apply for Interim Authorization for Phase II, Component A (or Components A and B) a State must also apply for or have received, Interim Authorization for Phase I. A State applying for Interim Authorization for Phase I at the same time as Phase II, Component A (or Components A and B) must demonstrate, pursuant to 40 CFR § 123.129, that its Phase I program is substantially equivalent to the Federal regulations listed in Table C, including all amendments to these regulations that have been promulgated on or before the date of this notice. A State that has previously received Interim Authorization for Phase I and is applying for Interim Authorization for Phase II, Component A (or Components A and B) must amend its Phase I application to account for amendments to the regulations in Table C that have been promulgated on or before the date of this notice and were not accounted for in the State's original Phase I application. This means that States that have received Interim Authorization based on the May 19, 1980 Federal regulations must include with their Phase II application an amendment to their Phase I program accounting for new hazardous wastes identified in 40 CFR Part 261, new interim status standards (such as financial requirement) in 40 CFR Part 265 and any other additions to the Phase I regulations that have been made since May 19, 1980.

EPA will soon distribute to the States and other interested persons a Program Implementation Guidance Memorandum which will identify the specific amendments to the Federal program which have occurred since May 19, 1980.

III. Effective Date

State Interim Authorization for Phase II, Component A can take effect on or after July 13, 1981. State Interim Authorization for Phase II, Component B can take effect on or after July 27, 1981.

IV. Authority

Sections 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6905, 6912(a) and 6926, and implementing regulations in 40 CFR Part 123, Subpart F.

Table A.—Interim Authorization Phase II, Component A, Permit Program for Containers, Tanks, Surface Impoundments and Waste Piles

The Federal hazardous waste regulations for which States must demonstrate substantial equivalence for Phase II, Component A Interim Authorization are:

40 CFR Part 264—Standards for Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities

Subpart A—General
Subpart B—General Facility Standards
Subpart C—Preparedness and Prevention
Subpart D—Contingency Plan and Emergency Procedures
Subpart E—Manifest System, Recordkeeping and Reporting
Subpart G—Closure and Post Closure
Subpart H—Financial Requirements
Subpart I—Use and Management of Containers
Subpart J—Tanks
Subpart K—Surface Impoundments
Subpart L—Waste Piles

40 CFR Part 122—EPA Administered Permit Programs: The Hazardous Waste Permit Program

Subpart A—Definitions and General Program Requirements
Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

40 CFR Part 124—Procedures for Decision Making

Subpart A—General Program Requirements
Subpart B—Specific Procedures Applicable to RCRA Permits

Table B.—Interim Authorization Phase II, Component B, Permit Program for Incinerators

The Federal hazardous waste regulations for which States must demonstrate substantial equivalence for Phase II, Component B Interim Authorization are:

40 CFR Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

Subparts A–H (as they apply to incinerators)
Subpart O—Incinerators

40 CFR Parts 122 and 124—(as they apply to permitting of incinerators)

Table C.—Phase I Interim Authorization

The Federal hazardous waste regulations for which States must demonstrate substantial equivalence for Phase I Interim Authorization are:

40 CFR Part 260—Hazardous Waste Management System: General
40 CFR Part 261—Identification and Listing of Hazardous Waste
40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste
40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste
40 CFR Part 265—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.

Dated: January 17, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81–2535 Filed 1–23–81; 8:45 am]
BILLING CODE 6560–30–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 1–1

[FPR Amdt. 213]

Federal Procurement Regulations; General; Options

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations prescribes policies and procedures regarding the use of option rights in contracts. The basis for the amendment is the increased use of option provisions in contracts by civilian agencies. The effect will be to provide uniform instructions for the use of options in Government contracts.

EFFECTIVE DATE: February 13, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy, 703–557–8947.

SUPPLEMENTARY INFORMATION: The amendment parallels the policies and procedures which currently are in the Defense Acquisition Regulation and are under consideration for inclusion in the proposed Federal Acquisition Regulation (FAR). The amendment provides for the use of provisions dealing with the evaluation of option bids which are higher than the amount of the base bids submitted. It is consistent with two decisions by the Comptroller General (B–182066, 54 Comp. Gen. 476 (December 9, 1974), and B–183114, 54 Comp. Gen. 967 (May 19, 1975)) concerning higher priced options.

The table of contents for Part 1–1, General, is amended to add a Subpart for options, as follows:

Subpart 1–1.15—Options

Subpart 1–1.15 is added to read as follows:

Subpart 1–1.15—Options

§ 1–1.1500 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. It does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property, (b) architect and engineering services, and (c) research and development services, however, it does not preclude the use of options in those contracts, and (d) automated data processing equipment and services in § 1–4.1108–4.

§ 1–1.1501 Definition.

"Option" means a unilateral right in a contract by which, for a specified time, and at a guaranteed price, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

§ 1–1.1502 Use of options.

(a) Contracting officers may include options in contracts when it is in the best interest of the Government.

(b) Contracting officers normally should not employ options if they can reasonably foresee (1) a requirement for minimum economic production quantities at some future date, and (2) that startup costs, production leadtime, and probable delivery requirements will not preclude adequate future competition.

(c) Contracting officers shall not employ options if:

(1) The supplies are readily available on the open market;

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable or economic price adjustment provisions are not included;

(3) An indefinite quantity or requirements contract is appropriate (except that contracting officers may use options for extending the term of such contracts);

(4) Market prices for the supplies involved are likely to change substantially; or

(5) The option represents known firm requirements for which funds are available unless (i) the basic quantity is a learning or testing quantity and (ii) competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of (1) the Government's need in certain service contracts for continuity of operations and (2) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

§ 1–1.1503 Solicitations.

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options.

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option.

(c) Solicitations shall include an Evaluation of Options provisions substantially as in § 1–1.1508–1(a) or (b) of this subpart, if it is anticipated that the Government may exercise the option at time of award.

(d) Solicitations normally should allow offerors to submit option prices without limitation. The Government shall not impose a price limitation if it intends to consider the option in the evaluation for award.

(e) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the date(s) when ordered.

(f) Solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).

(g) Solicitations may, in unusual circumstances, require that options be

offered at prices no higher than those for the initial requirement; e.g., when (1) the option cannot be evaluated, or (2) future competition for the option is impracticable.

(h) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall:

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

§ 1-1.1504 Contracts.

(a) Contracts shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension.

(b) Contracts shall state an adequate but minimum notification period within which the option may be exercised:

(1) It shall provide lead time to assure continuous production.

(2) It may extend beyond the contract completion date for service contracts. (This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.)

(c) Contracts shall limit the total term of the contract including option periods to 5 years for services and a 5-year requirement for supplies.

(d) Contracts may express options for increased quantities of supplies or services, in terms of (1) percentage of specific line items, (2) increase in specific line items, or (3) additional numbered line items identified as the option.

(e) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; e.g., days, weeks, or months.

§ 1-1.1505 Documentation.

(a) Contracting officers shall justify the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under § 1-1.1503(g) of this subpart; and shall include the justification document in the contract file.

(b) Written determinations and findings that are required for negotiated contracts shall specify both the basic requirements and the increase by the option.

§ 1-1.1506 Evaluation.

(a) Contracting officers may consider the option in the evaluation for award of a firm fixed-price contract or a fixed-price contract with economic price adjustment. If the contracting officer determines to do so, an authorized person at a level above the contracting officer shall determine, before the solicitation is issued, that:

(1) There is a known requirement which exceeds the basic quantity to be awarded but (i) that quantity is a learning or testing requirement, or (ii) due to the unavailability of funds, the agency cannot exercise the option at the time of award; and

(2) Competition for the option quantity is impracticable once the initial contract is awarded. (This determination shall reflect factors such as substantial startup or phase in costs, superior technical ability resulting from performance of the initial contract, and long preproduction leadtime for a new producer.)

(b) Contracting officers may consider the option in the evaluation of award for fixed-price incentive contracts if:

(1) The determination in paragraph (a) of this section was made before issuance of the solicitation; and

(2) The solicitation (i) specifies an incentive arrangement and (ii) specifies that the agency will base the ceiling price and target profit for the basic and option quantities on stated percentages of the offeror's target cost. The solicitation shall state the percentages which apply to all proposals and shall contain the provision substantially as in § 1-1.1508-1(c) of this subpart.

§ 1-1.1507 Exercise of options.

(a) In the exercise of option provisions, contracting officers shall provide the written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) Contracting officers may exercise an option only after determining that:

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and factors in paragraphs (d) and (e) of this section considered.

(d) Contracting officers, after considering price and factors other than price, shall make their determinations on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

(2) An informal analysis of prices and an examination of the market indicates the option price is better than prices available in the market or that the option is the more advantageous offer.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

(e) The determination of other factors under paragraph (c)(3) of this section should take into account the Government's need for continuity of operations and potential costs of disrupting operations.

(f) Contracting officers, when exercising an option, shall determine that it was exercised in accordance with the terms of the option and with the requirements of this section. (The written determination shall be included in the contract file).

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority. The negotiation authorities under 41 U.S.C. 252(c) or 10 U.S.C. 2304(a) are not applicable and shall not be cited.

§ 1-1.1508 Examples of evaluation of option solicitation provisions and option clauses.

§ 1-1.1508-1 Evaluation of option solicitation provisions.

(a) As required by § 1-1.1503(c) of this subpart, insert a provision substantially similar to the following:

Evaluation of Options

The Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

(b) As required by § 1-1.1503(c) of this subpart, insert a provision substantially similar to the following:

Evaluation of Options

(a) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option(s). An offer is unbalanced when it is based on prices significantly less than cost for some work and prices are significantly overstated for other work.

(End of provision)

(c) In accordance with § 1–1.1506(b) of this subpart, insert a provision substantially as follows:

Evaluation of Options

(a) The Government will evaluate offers for award puposes by adding the total price for all options to the total price for the basic requirement. The offeror's target cost for the basic requirement and the option(s) is the price of the basic requirement and the option(s) for evaluation purposes. Evaluation of options will not obligate the Government to exercise the option(s).

(b) Any offer may be rejected as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option(s). An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

§ 1–1.1508–2 Option clauses.

(a) A clause substantially as follows may be used to express the option as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

Option for Increased Quantity

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

(b) A clause substantially as follows may be used to express the option as a separately priced line item.

Option for Increased Quantity

The Government may require the delivery of the numbered line item in the amount and at the price identified in the Schedule as an option. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

(c) A clause substantially as follows may be used to express the option as an extension of the services described in the schedule.

Option to Extend Services

The Government may require continued performance of any services within the limits and at the rates stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

(d) A clause substantially as follows may be used to express the option as an extension of the services described in the schedule, to extend the option, and to establish the limits on the number of years the option may continue.

Option to Extend the Term of the Contract

(a) The Government may extend the term of this contract by written notice to the Contractor within the time specified in the Schedule.

(b) The Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(c) If the Government exercises the option, the extended contract includes this option provision.

(d) The total duration of this contract, including the exercise of any options under this clause, shall not exceed ——— (months)(years).

(End of clause)

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: January 12, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81–2446 Filed 1–23–81; 8:45 am]

BILLING CODE 6820–61–M

41 CFR Parts 1–3 and 1–15

[FPR Amdt. 212]

Cost Principles for Nonprofit Organizations

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment adds a new set of cost principles applicable to nonprofit organizations and makes miscellaneous revisions to Parts 1–3 and 1–15. It is based primarily on cost principles published by the Office of Management and Budget in Circular A–122, June 27, 1980 (45 FR 46021). The new cost principles supersede cost principles issued by individual agencies for nonprofit organizations and are intended to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703–557–8947).

SUPPLEMENTARY INFORMATION: The following additional information is pertinent to the contents of this amendment:

(1) Some nonprofit organizations, because of their size and nature of operations, are considered to be similar to commercial concerns for the purpose of applicability of cost principles. These nonprofit organizations are required to operate under Federal cost principles applicable to commercial concerns (Subpart 1–15.2). A listing of these organizations is included in OMB Circular No. A–122, which is incorporated in this amendment.

(2) OMB Circular A–122, as published by OMB, contains several typographical errors and word omissions. Corrections have been made in the version of the Circular, which is included in the text of this amendment.

(3) Several miscellaneous revisions to Parts 1–3 and 1–15 are made in this amendment to make related coverage and references compatible.

PART 1.3—PORCUREMENT BY NEGOTIATION

Subpart 1–3.7—Negotiated Overhead Rates

1. Section 1–3.701 is amended to revise paragraphs (a) and (d) to read as follows:

§ 1–3.701 Definitions.

As used in this subpart:

(a) The term "overhead (indirect costs)" includes but is not limited to the general groups of indirect expenses, such as those generated in manufacturing departments, engineering departments, tooling departments, general and administrative departments, and, if applicable, indirect costs accumulated by cost centers within those general groups (see § 1–15.203). In the case of contractors using fund accounting systems (e.g., educational institutions), the term includes but is not limited to the general groups of expenses, such as: general administration and general; operation and maintenance of physical plant; library; and departmental administration (see paragraphs E and F of the Attachment to OMB Circular A–21, which is reprinted in § 1–15.303).

* * * * *

(d) The term "negotiated final overhead rate" means a percentage or dollar factor that expresses the ratio(s) mutually agreed upon by the contracting officer and the contractor after the close of the contractor's fiscal year, unless the parties mutually agree to a different period, of allowable indirect expense incurred in the completed period to direct labor, manufacturing cost, cost input, or other appropriate allocation or distribution base of the same period. Ordinarily, these rates are used as a means of determining the amount of reimbursement for the applicable indirect costs for such completed period; in such cases they are termed "post determined" overhead rates. In certain circumstances, negotiated final overhead rates may be used as a means of determining the amount of reimbursement for the applicable indirect costs to be incurred during a future period of contract performance; in such cases they are termed "predetermined" overhead rates (see § 1–3.703(c)).

* * * * *

2. Section 1–3.702 is revised to read as follows:

§1–3.702 General.

Except for contracts with educational institutions, nonprofit organizations, and State and local Governments, where predetermined overhead rates may be used (see § 1–3.703(c)), the negotiation, determination, or settlement of the reimbursable amount of overhead under cost-reimbursement type contracts ordinarily is accomplished after the fact on an individual-contract basis and is based upon an audit of actual costs incurred during the period involved, in accordance with agency procedures (see § 1–3.705(c)). However, where a contractor performs work in the same period under several contracts for one or more procurement activities or agencies, it may be desirable and appropriate, when mutually agreed to by the agencies and the contractor, to negotiate uniform overhead rates for application to all such contracts to: (a) effect uniformity of approach, (b) effect economy in administrative effort, and (c) promote timely settlement or reimbursement claims. These objectives are not intended to preclude the use of an overhead rate which excludes elements of cost that are not allocable to a particular contract. (See, for example, § 1–3.807–11 and paragraph G of the Attachment to OMB Circular A–21 reprinted in § 1–15.303.) The basis or justification for the latter shall be contained in the contract file (see § 1–3.706).

3. Section 1–3.703 is amended to revise paragraphs (a) and (c) to read as follows:

§1–3.703 Applicability.

(a) Billing overhead rates (see § 1–3.701(b)) or negotiated (provisional and final) overhead rates (see § 1–3.701 (c) and (d)) may be used in any cost-reimbursement type contract (except facilities contracts) where such use, under the guidelines of this Subpart 1–3.7, is appropriate; where the use of negotiated rates will accomplish one or more of the purposes listed in § 1–3.702; or where the use of either billing or negotiated rates will be otherwise advantageous to the Government. (See paragraph (c) of this section with respect to predetermined overhead rates.)

* * * * *

(c) Predetermined overhead rates may be used in cost-type research and development contracts with educational institutions (Public Law 87–638; 10 U.S.C. 2306 note), cost-type contracts with nonprofit organizations (OMB Circular A–122), and cost-type contracts with State and local governments (Federal Management Circular 74–4). The use of such rates is permissive and not mandatory. In determining whether or not predetermined overhead rates should be used in one or more contracts with an institution, consideration should be given to the degree of stability shown in overhead rates and their bases over a period of years. All anticipated changes in the contractor's volume and overhead shall be taken into consideration. In addition, the following procedures shall be employed:

* * * * *

4. Section 1–3.705 is amended to revise paragraph (f)(4) to read as follows:

§1–3.705 Procedure.

* * * * *

(f) * * *

(4) The various overhead rates, and related bases and periods resulting from the negotiation (see, for example, § 1–15.203 and paragraph E of Attachment A of OMB Circular A–21, which is reprinted in § 1–15.303);

* * * * *

PART 1–15—CONTRACT COST PRINCIPLES AND PROCEDURES

5. The table of contents for Part 1–15 is amended to add one entry under Subpart 1–15.1 and seven entries under Subpart 1–15.6 and to revise one entry under Subpart 1–15.1 and one entry under Subpart 1–15.3 as follows:

Subpart 1–15.1—Applicability

6. Section 1–15.102 is revised to read as follows:

§ 1–15.102 Negotiated supply, service, experimental, developmental, and research contracts, and contract changes with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated on the basis of cost with concerns other than educational institutions (see § 1–15.103), State and local governments (see § 1–15.108), and nonprofit organizations (see § 1–15.110). It does not include facilities contracts (see § 1–15.105) or construction and architect-engineer contracts (see § 1–15.104). Except with respect to the cost principles and procedures in §§ 1–15.201–4, Definition of allocability; 1–15.205–3, Bidding costs; 1–15.205–6, Compensation for personal services; 1–15.205–26, Patent costs; and 1–15.205–35, Research and development costs, the use of which are optional, the remaining cost principles and procedures set forth in Subpart 1–15.2 are prescribed for mandatory use and shall be (a) used in the pricing of negotiated supply, service, experimental, developmental, and research contracts, and contract modifications with concerns other than educational institutions, State and local governments, and nonprofit organizations (but see § 1–15.110 (b)(4)) whenever cost analysis is to be performed pursuant to § 1–3.807–2, and (b) incorporated (by reference, if desired) in such contracts as the basis:

* * * * *

7. Section 1–15.103 is revised to read as follows:

§ 1-15.103 Contracts with educational institutions.

(a) This category includes all contracts and contract modifications for research and development, training, and other sponsored work performed by educational institutions. The cost principles and procedures set forth in Subpart 1-15.3 shall be incorporated (by reference, if desired) in cost-reimbursement type contracts with educational institutions as the basis for:

(1) Determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(2) The negotiation of overhead rates (Subpart 1-3.7); and

(3) The determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart 1-8.4) and for settlement of such contracts by determination (§ 1-8.209-7).

(b) In addition, Subpart 1-15.3 is to be used as a guide in the pricing of fixed price contracts, subcontracts, and termination settlements with educational institutions when costs are used in determining the appropriate price.

8. Section 1-15.109 is revised to read as follows:

§ 1-15.109 Definitions.

As used in this part, the words and phrases shall have the meanings of the definitions set forth in § 1-3.1220(b).

9. Section 1-15.110 is added as follows:

§ 1-15.110 Contracts with nonprofit organizations.

(a) Subpart 1-15.6 of this Part 1-15 provides principles and procedures for determining the costs of work performed by nonprofit organizations under cost-reimbursement type contracts and subcontracts and other contracts in which costs are used in pricing, administration, or settlement. The cost principles and procedures set forth in Subpart 1-15.6 shall be incorporated (by reference, if desired) in cost-reimbursement type contracts with nonprofit organizations as the basis for:

(1) Determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(2) For the negotiation of overhead rates (Subpart 1-3.7); and

(3) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart 1-8.4) and for settlement of such contracts by determination (§ 1-8.209-7).

(b) The principles set forth in Subpart 1-15.6 do not apply to contracts and subcontracts with:

(1) Colleges and universities, which are covered by Subpart 1-15.3;

(2) State, local, and federally recognized Indian tribal Governments, which are covered by Subpart 1-15.7;

(3) Hospitals and other providers of medical care, which are subject to requirements issued by the sponsoring Government agencies; and

(4) Some nonprofit organizations, which because of their size and nature of operations have been determined to be similar to commercial concerns for purposes of applicability of cost principles. These organizations are listed in Attachment C of OMB Circular A-122, which is reprinted in § 1-15.603-3. The listed nonprofit organizations are subject to the cost principles in Subpart 1-15.2.

Subpart 1-15.3—Contracts With Educational Institutions

10. Section 1-15.301 is recaptioned and revised to read as follows:

§ 1-15.301 Application.

The principles and procedures set forth in this Subpart 1-15.3 will be applied as provided in § 1-15.103.

Subpart 1-15.5—Contracts for Industrial Facilities

11. Section 1-15.502-1 is revised to read as follows:

§ 1-15.502-1 Applicable cost principles.

Except as otherwise provided in this subpart, the allowability of cost will be determined in accordance with Subparts 1-15.2, 1-15.3, 1-15.4, or 1-15.6 of this Part 1-15, as appropriate.

12. Subpart 1-15.6 is added to read as folows:

Subpart 1-15.6—Contracts With Nonprofit Organizations

§ 1-15.600 Scope of subpart.

This subpart sets forth principles for determining allowable costs applicable to contracts and cost-reimbursement type subcontracts performed by nonprofit organizations. Provision for profit or other increment above cost is outside the scope of this subpart.

§ 1-15.601 Application.

The principles and procedures set forth in this Subpart 1-15.6 will be applied as provided in § 1-15.110.

§ 1-15.602 Policy guides.

(a) The cost principles prescribed by this subpart are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of any cost sharing or matching and no cost sharing or matching shall be accomplished through arbitrary limitations on individual cost elements by Federal agencies.

(b) The cost principles set forth in this subpart supersede any cost principles issued by individual agencies for nonprofit organizations.

§ 1-15.603 OMB Circular A-122—Transmittal letter.

The "Cost Principles For Nonprofit Organizations" promulgated by the Office of Management and Budget in OMB Circular A-122, June 27, 1980, [45 FR 46021, July 8, 1980] are prescribed by this section for use in contracts and cost-reimbursement type subcontracts. Although the Circular applies to grants and other agreements, as well as contracts and cost-reimbursement type subcontracts, the Federal Procurement Regulations only apply the provisions of the Circular to contracts and cost-reimbursement type subcontracts.

Executive Office of the President,
Office of Management and Budget,
Washington, D.C., June 27, 1980.

Circular No. A-122

To the Heads of Executive Departments and Establishments

Subject: Cost principles for nonprofit organizations

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with nonprofit organizations. It does not apply to colleges and universities which are covered by Circular A-21; State, local, and federally recognized Indian tribal governments which are covered by Circular 74-4; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by individual agencies for nonprofit organizations.

3. *Applicability.* a. These principles shall be used by all Federal agencies in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to

account to the Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a nonprofit organization this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a State, local, or federally recognized Indian tribal government, Circular 74–4 shall apply.

4. *Definitions.* a. *"Nonprofit organization"* means any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "nonprofit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally recognized Indian tribal governments; and (iv) those nonprofit organizations which are excluded from coverage of this Circular in accordance with paragraph 5 below.

b. *"Prior approval"* means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some nonprofit organizations.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such nonprofit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to nonprofit organizations shall implement the provisions of this Circular. Upon request, implementing instructions shall be furnished to the Office of Management and Budget. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to the Office of Management and Budget within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles.

Attachment B—Selected Items of Cost.

Attachment C—Nonprofit Organizations Not Subject to This Circular.

8. *Requests for exceptions.* The Office of Management and Budget may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395–4773.

James T. McIntyre, Jr.,

Director.

§ 1–15.603–1 General Principles—Attachment A

Circular No. A–122; Attachment A

General Principles

Table of Contents

Circular No. A–122; Attachment A

General Principles

A. Basic Considerations

1. *Composition of total cost.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs.* To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles.

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderence of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Goverment award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the beneifts received.

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The Term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost they shall be credited to the Government

either as a cost reduction or cash refund as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

(c) For rules covering program income (i.e., gross income earned from federally supported activities) see Attachment D of OMB Circular A–110.

6. *Advance understandings.* Under any given award the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective; i.e., a particular award, project, service or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstances, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The costs of certain activities are not allowable as charges to Federal awards (see, for example, fund raising costs in paragraph 21 of Attachment B). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

e. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct costs of minor amounts may be treated as indirect costs under the conditions described in paragraph B.2. above. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs for many nonprofit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. *General.*

a. Where a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in paragraph 2 below.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costsmay require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fund raising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in paragraphs 2 through 5 below.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. *Simplified allocation method.*

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in paragraph B.3. above.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29 of Attachment B.

d. Except where a special rate(s) is required in accordance with paragraph D.5 below, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

3. *Multiple allocation base method.*

a. Where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits.

b. The groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major

functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision desired.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Government and the organization. In general, any cost element or cost related factor associated with the organization's work is potentially adaptable for use as an allocation base provided (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (ii) it is common to the benefiting functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph D.5. below, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as major subcontracts and subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29, Attachment B. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool.

4. *Direct allocation method.*

a. Some nonprofit organizations, treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) general administration and general expenses, (ii) fund raising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct cost to each category and to each award, or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in paragraph D.2 above.

5. *Special indirect cost rates.* In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used provided it is determined that (i) the rate differs significantly from that which would have been obtained under paragraphs D.2, 3, and 4 above, and (ii) the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. *Definitions.* As used in this section, the following terms have the meanings set forth below:

a. "Cognizant agency" means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. "Provisional rate" or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a rate for the period.

f. "Indirect cost proposal" means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. "Cost objective" means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. *Negotiation and approval of rates.*

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with a organization will be designated as the cognizant agency for the negotiation and approval of indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process, but after a rate has been agreed upon it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with paragraph D.5 above, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A nonprofit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal to the cognizant agency. The proposal shall be submitted as soon as possible after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Government and

non-government work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the nonprofit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the nonprofit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance as required to resolve such problems in a timely manner.

§ 1-15.603-2 Selected items of cost—Attachment B

Circular No. A-122—Attachment B.—Selected Items of Cost

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Circular No. A-122—Attachment B.—Selected Items of Cost

Paragraphs 1 through 50 provide principles to be applied in establishing the allowability of certain item of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular items of cost is not intended to imply that it is unallowable; rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* (reserved)

4. *Bonding costs.*

a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job,

such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragrah g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workmen's compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workmen's compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. Pension plan costs.

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accured pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. Overtime, extra pay shift, and multishift premiums. See paragraph 27.

j. Severance pay. See paragraph 44.

k. Training and education costs. See paragraph 48.

l. Support of salaries and wages.

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports as prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the cognizant agency. (See pargraph E.2. of Attachment A)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. Contingency provisions. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 6.f.(3) and 18.a.(2)(d)); pension funds (see paragraph 6.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1).

8. Contributions. Contributions and donations by the organization to others are unallowable.

9. Depreciation and use allowances.

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assests involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or deprecitation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two per cent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds per cent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's

components (e.g. plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two per cent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds per cent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advnace by the cognizant Federal agency. when the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

10. *Donations*—a. *Services received.* (1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organzation's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist: (a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of donated services may be used to meet cost sharing or matching requirements under conditions described in Attachment E, OMB Circular No. A–110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

b. *Goods and space.* (1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Attachment E, OMB Circular No. A–110. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below: (1) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than two years and and acquisition cost of $500 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a

direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of $1000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6. f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* (reserved).

18. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see paragraphs 6.f. and 6.g. (2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B. of Attachment A.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

22. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless othewise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

23. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

24. *Meetings, conferences.*

a. Costs associated with the conduct of meetings and conferences include the cost of renting facilities, meals, speakers fees, and the like. But see paragraph 12, *Entertainment costs,* and paragraph 29, *Participant support costs.*

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See paragraph B of Attachment A.) These costs are allowable provided that they meet the general tests of allowability, shown in Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

25. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences, sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

26. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

27. *Overtime, extra-pay shift, and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

28. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

29. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

30. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 34).

b. Costs of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see Paragraph 43).

31. *Pension plans.* See paragraph 6. g.

32. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms, and equipment of personnnel are allowable.

33. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such cost is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

34. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d, of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 47e).

35. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a.(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(3) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

36. *Public information service costs.*

a. Public information service costs include the cost associated with pamphlets, news

releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

37. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed in paragraph 28.

38. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

39. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

40. *Recruiting costs.* The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 41c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

41. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

42. *Rental costs.*

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-arm's-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g., depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease is noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 per cent or more of the economic life of the leased property; i.e., the period the property is expected to be economically usable by one or more users.

43. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

44. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

45. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

46. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

47. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency.

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See paragraph 4.a. of Attachment L, OMB Circular No. A-110; and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organgization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

48. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to;

(1) Training materials.

(2) Textbooks.

(3) Fees charged by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 22, and 42.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

49. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 23). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

50. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 40 and 41, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For puposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

§ 1-15.603-3 Nonprofit organizations not subject to this circular—Attachment C

Circular No. A-122

Attachment C

Nonprofit Organizations not Subject to This Circular

Aerospace Corporation, El Segundo, California
Argonne Universities Association, Chicago, Illinois
Associated Universities, Incorporated, Washington, D.C.
Associated Universities for Research and Astronomy, Tucson, Arizona
Atomic Casualty Commission, Washington, D.C.
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Center for Energy and Environmental Research (CEER), (University of Puerto Rico), Commonwealth of Puerto Rico
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
Comparative Animal Research Laboratory (CARL), (University of Tennessee), Oakridge, Tennessee
Environmental Institute of Michigan Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Institute, Chicago, Illinois
Institute for Defense Analysis, Arlington, Virginia
Institute of Gas Technology, Chicago, Illinois
Midwest Research Institute, Headquartered in Kansas City, Missouri
Mitre Corporation, Bedford, Massachusetts
Montana Energy Research and Development, Institute, Inc. (MERDI), Butte, Montana
National Radiological Astronomy Observatory, Green Bank, West Virginia
Oakridge Associated Universities, Oakridge, Tennessee
Project Management Corporation, Oakridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Sandia Corporation, Albuquerque, New Mexico
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association, Incorporated, (National Acceleration Lab), Argonne, Illinois
University Corporation for Atmospheric Research, Boulder, Colorado
Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations.
Other nonprofit organizations as negotiated with awarding agencies.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: January 13, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-2448 Filed 1-23-81; 8:45 am]

BILLING CODE 6820-61-M

41 CFR Parts 5A-7 and 5A-16

[APD 2800.3 CHGE 20]

Contract Marking Requirements

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5A, are amended to delete GSA Form 1400, Guide for Marking Shipments and to delete reference to the form in the Marking Provisions clause. The marking requirements contained in the form have been incorporated into the latest

revision of Federal Standard No. 123. The effect of this change is to eliminate the duplication of instruction to contractors regarding marking of shipments.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy, (703) 557–8947.

PART 5A–7—CONTRACT CLAUSES

Subpart 5A–7.1—Fixed-Price Supply Contracts

1. Section 5A–7.102–75 is revised as follows:

§ 5A–7.102–75 Marking provisions.

The following clause shall be included in all solicitations:

(a) *Deliveries to civilian agencies.* Unless otherwise specified, unit, intermediate, and shipping container markings, including special markings, shall be in accordance with Federal Standard No. 123, edition in effect on the date of the solicitation, and the commodity specification for the item. Copies of Federal Standard No. 123 may be obtained from the office issuing the solicitation or as indicated in the provision entitled "Copies of Government Specifications and Standards."

(b) *Deliveries to military agencies.* Marking of shipments for delivery to military agencies shall be as otherwise specified in the contract or in purchase orders issued under the contract but, if not so specified, the interior packages and the exterior shipping containers shall be marked in accordance with Military Standard No. 129, edition in effect on the date of the solicitation.

(c) *Improperly marked material.* When any shipment is not marked in accordance with the contract requirements, the Government, notwithstanding the Inspection clause (Article 5, Standard Form 32), shall have the right, without prior notice to the Contractor, to: (1) Reject the shipment; (2) perform the required marking by use of Government personnel and charge the Contractor therefor at a rate of (fill in current rate) per man-hour for the first hour or fraction thereof and (fill in current rate) for each succeeding hour or fraction thereof; or (3) have the marking performed by an independent contractor and charge the Contractor at the above rates. In connection with any prompt payment discount offered, time will be computed from the date of completion of any marking or remarking required by this paragraph, or receipt of proper invoice, whichever is later.

PART 5A–16—PROCUREMENT FORMS

2. The Contents of Subpart 5A–16.9 Illustration of Forms is amended to remove the following entry:

Subpart 5A–16.9—Illustration of Forms

Sec.

* * * * *

5A–16.950–1400 [Removed]

* * * * *

3. Section 5A–16.950–1400 is removed as follows:

§ 5A–16.950–1400 [Removed]

(Sec. 205(c), 63 Stat. 390; 486 U.S.C.)

Dated: January 5, 1981.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

[FR Doc. 81–2449 Filed 1–23–81; 8:45 am]

BILLING CODE 6820–61–M

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41 CFR Ch. 101

[FPMR Temp. Reg. A–18]

Agency Requirements for the Collection of Fiscal Years 1980 and 1981 Travel Cost Data

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: The Administrator of General Services is required by Public Law 96–346 to collect by fiscal year and report to the Congress certain travel cost data with respect to agencies spending more than $5 million annually on transportation of people. This regulation establishes agency reporting procedures and requirements for submission of travel cost data to GSA.

DATES: Effective date: January 26, 1981. Expiration date: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: W. F. McDade or Audrey E. Rish, Federal Travel Management Division, General Services Administration, 425 I Street, NW., Washington, D.C. 20406, (202) 275–0651.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Public Law 96–346 empowers the Administrator of General Services to issue such rules and regulations as are necessary to ensure that the required data is furnished by the various agencies to GSA and in a manner that permits comparisons. This temporary regulation establishes agency reporting requirements, which will be supplemented by the Commissioner, Transportation and Public Utilities Service, by letter to the affected agencies. (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of subchapter A to read as follows:

General Services Administration,
Washington, DC
January 21, 1981.

Temporary Regulation A–18; Federal Property Management Regulations

To: Heads of selected Federal agencies.
Subject: Agency requirements for the collection of Fiscal year 1980 and Fiscal year 1981 travel cost data.

1. *Purpose.* This regulation prescribes procedures and requirements for the reporting of agency travel cost data by selected Federal agencies for Fiscal year 1980 and Fiscal year 1981 pursuant to Public Law 96–346.

2. *Effective date.* This regulation is effective immediately upon publication in the Federal Register.

3. *Expiration date.* This regulation expires June 30, 1982, unless superseded or canceled on an earlier date.

4. *Background.*

a. Public Law 96–346, approved September 10, 1980, requires that the Administrator of General Services shall, based upon a sampling survey, collect by fiscal year the following information (compiled separately for payments made under sections 5702 and 5704 of title 5, U.S. Code, and for each agency evaluated) with respect to agencies spending more than $5 million annually on transportation of people:

(1) Identification of the general causes and purposes of travel, both foreign and domestic, estimates of total payments, average cost and duration of trip, and an explanation of how these estimates were determined; and

(2) Identification by specific agency of travel practices which appear to be inefficient from a travel management or program management standpoint and recommendations to the Congress on the applicability of alternatives to travel as well as other techniques to improve the use of travel in carrying out program objectives by relating travel to mission.

b. The Administrator is required to report the above information to the Congress for Fiscal Year 1979 by February 1, 1981; for Fiscal Year 1980 by June 1, 1981; and for Fiscal Year 1981 by June 1, 1982.

c. Public Law 96–346 empowers the Administrator to issue such rules and regulations as are necessary to ensure that the information is submitted by the various agencies to GSA in a manner that permits comparisons among the agencies and to permit the compilation of information required to be included in the annual report.

5. *Scope.* This regulation applies to any Federal agency, as defined in 5 U.S.C. 5701(1),

expending more than $5 million annually on the transportation of people.

6. *Applicability.* This regulation applies specifically to those selected agencies listed in Attachment A to this regulation. These agencies were selected on the basis of Fiscal Year 1979 expenditures. This regulation also applies to any Federal agency that is within the scope of this regulation for Fiscal Year 1980 and Fiscal Year 1981 expenditures and not specifically listed in Attachment A.

7. *Submission requirements.* The travel cost data, documents and information required by this regulation shall be submitted by the Heads of those agencies listed in Attachment A (see item 6, Applicability, above), to the General Services Administration, TPUS (TTT), Room 3112, 425 I Street NW, Washington, D.C. 20406. The required data shall be submitted as soon as possible after the close of Fiscal Year 1980 and Fiscal Year 1981 but in no case later than February 15, 1981, and 1982, respectively. Those agencies not submitting the data in a timely manner or as required by this regulation will, of necessity, be reported to the Congress as delinquent.

8. *Reporting requirements.* Actual reporting requirements in the form of a travel management questionnaire and instructions for a travel voucher survey will be forwarded to each affected agency by the Commissioner, Transportation and Public Utilities Service (TPUS), as soon as possible after publication of this regulation. An Interagency Report Control Number will be assigned to this reporting requirement in accordance with FPMR 101–11.11 and will be transmitted to agencies along with reporting instructions by the Commissioner, TPUS.

9. *Points of contact.* Heads of affected agencies shall immediately appoint a designee at the headquarters level who will be responsible for receiving reporting requirement instructions and to ensure that such instructions are complied with in a timely manner. The name, address, and telephone number of the designated individuals shall be submitted by telephone within 2 weeks of the publication date of this regulation to W. F. McDade, Director, or Audrey Rish, Deputy Director, Federal Travel Management Division, TPUS; FTS telephone 275–0651.

Ray Kline,

Acting Administrator of General Services.

Attachment A—Federal Agencies Selected To Participate in Sampling of Fiscal Year 1980 Travel Vouchers

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Resources
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Environmental Protection Agency
National Aeronautics and Space Administration
Veterans Administration
Federal Home Loan Bank Board
General Accounting Office
General Services Administration
International Communications Agency
Nuclear Regulatory Commission
Office of Personnel Management
Small Business Administration
Tennessee Valley Authority
ACTION

[FR Doc. 81–2821 Filed 1–23–81; 8:45 am]
BILLING CODE 6820–AM–M

41 CFR Part 101–37

[FPMR Amdt. F–45]

Federal Property Management Regulations; Telecommunications Management; Intercity Toll-Free Telephone Services

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides a description of incoming intercity toll-free telephone services to the public, clarifies the information that the General Services Administration (GSA) needs to evaluate the request for toll-free services, and establishes a requirement for agencies to review annually these services to ensure they are cost-effective.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Robert R. Johnson, Policy and Evaluation Division (202–566–0194).

SUPPLEMENTARY INFORMATION: This regulation codifies Temporary Regulation F–494, Policy on incoming intercity toll-free telephone services provided to the public (45 FR 15178, March 10, 1980), which is canceled and deleted from the appendix at the end of Subchapter F in 41 CFR Chapter 101. The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

PART 101–37—TELECOMMUNICATIONS MANAGEMENT

1. The table of contents for Part 101–37 is amended by adding the following new entries:

Subpart 101–37.2—Major Changes and New Installations

2. Section 101–37.202(b) is revised to read as follows:

§ 101–37.202 Description of major changes.

* * * * *

(b) *Intercity telephone service.* Installation or replacement of voice facilities interconnecting service points located in separate exchange areas. These facilities include Wide Area Telephone Services (WATS), foreign exchange (FX) circuits, and other intercity private lines, including toll-free circuit arrangements which allow the public to make long distance calls at Government expense. These toll-free arrangements include but are not limited to Inward Wide Area Telephone Service (INWATS or dial 800) and foreign exchange (FX) circuits.

* * * * *

3. Section 101–37.203(b) is revised to read as follows:

§ 101–37.203 Justification of major changes and new installations.

* * * * *

(b) *Intercity telephone service.* (1) The requesting agency shall describe the intercity requirement and include the average number of messages per business day, average conversation time per message, average operator time per message, and average percent of messages in the busy hour based on 5 workdays. The information should include toll calls originating at either end of the proposed circuit. A copy of the telephone company's monthly statement of the toll calls, including charges originating at either end of the proposed intercity circuit, should be furnished.

(2) Agency requests for intercity toll-free service to be provided to the public shall include a description of the requirement, the program to be supported, the purpose to be served, the type of service required (INWATS, FX, etc.), the location of each number (the telephone number is not required), the terminations, the service band, the estimated monthly cost, the number of circuits serving each number, the proposed usage (number of hours, full period, etc.), and either the title and date of the regulatory document if the service has been directed by a statute, Executive order, or other regulation; and certification of compliance with 31 U.S.C. 680(a), unless authorized by statute.

* * * * *

Subpart 101–37.3—Utilization and Ordering of Telecommunications Services

4. Sections 101–37.312, 101–37.312–1, and 101–37.312–2 are added to read as follows:

§ 101-37.312 Toll-free telephone service.

For the purpose of this subpart, toll-free telephone service is any incoming intercity circuit arrangement that allows the public to make long-distance telephone calls to authorized locations at Government expense. This intercity circuit arrangement includes but is not limited to Inward Wide Area Telephone Service (INWATS or dial 800) and foreign exchange (FX) circuits. The service is usually used for providing or obtaining information concerning Government programs, such as social welfare, disaster aid, veterans affairs, income tax, or health. Intercity toll-free telephone service shall be established only when the service is: (a) Essential to mission accomplishment; (b) necessary to meet program requirements; or (c) required by statute, Executive order, or other regulation.

§ 101-37.312-1 Agency responsibilities.

(a) The acquisition and management of intercity toll-free telephone service should be centrally managed within executive agencies to the greatest extent practicable. Prior approval of a responsible agency official shall be obtained for the acquisition of toll-free services.

(b) The requirement for intercity telephone service must be approved by GSA. (See § 101-37.203(b) for justification requirements.)

(c) An annual review of incoming intercity toll-free telephone services shall be conducted in accordance with agency procedures. The results of these reviews shall be retained in agency files. As a minimum, this review shall address:

(1) The need for continuing the service at the same level,

(2) Whether the existing toll-free service is the most cost effective method of satisfying the requirement, and

(3) Whether the intended program objectives are being achieved.

§ 101-37.312-2 GSA responsibilities.

(a) GSA maintains a record of all toll-free service requests. The record lists the name of the agency, reasons for the circuits, type of service, number of circuits, terminations, and cost. This record provides a current, central, Government-wide source for managing, engineering, budgeting, and planning; and for public and congressional inquiries.

(b) GSA (CT) will assess the technical and operational efficiency and the cost of the requested toll-free service. The purpose of the assessment is to ensure that the requested service is the most effective and/or economical arrangment from the standpoint of the Government's interest relative to the specialized requirment.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: January 9, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-2447 Filed 1-23-81; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

41 CFR Parts 14-1,14-2, 14-3, 14-4, 14-7, 14-16, 14-19, 14-26, and 14-30

Miscellaneous Amendments

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule makes miscellaneous amendments to the Interior Procurement Regulations. The amendments are required to delete sections that are no longer applicable; to make editorial changes; to correct typographical errors; to correct the caption to a section; and to add a new subpart concerning forms for assignment of claims and notice of assignment.

EFFECTIVE DATE: These amendments are effective January 26, 1981.

FOR FURTHER INFORMATION CONTACT: William S. Opdyke, 202-343-6431.

SUPPLEMENTARY INFORMATION:

Explanation

(a) Paragraph (b) of § 14-1.603 is deleted and reserved because it is no longer applicable. Section 1-1.603(d) to which paragraph (b) refers was revised by FPR Amendment 108 and does not refer to the Walsh-Healey Act.

(b) Section 14-1.604-1 is amended to make editorial changes in paragraphing. No change is made in the basic content.

(c) The typographical error in the section number of § 14-1.704-1 is corrected from § 14-7.704-1 to read § 14-1.704-1. §§ 14-1.704-1 and 14-1.704-2 are revised to correspond with the requirements of §§ 14-1.1302-3 and 14-1.1302-8, respectively.

(d) Section 14-1.902 is amended by designating the first paragraph as paragraph (a); by making editorial changes in the tenth, eleventh and last lines of that paragraph; and by adding a new paragraph (b) preceding the letter format. The letter format is retained and is not changed.

(e) In the sixth line of § 14-2.407-8(d), the word "concern" is corrected to read "concerned."

(f) In the last line of § 14-3.650(a)(6), the amount of $250 is changed to $2,500.

(g) The caption of § 14-4.1005-1 is changed from "Negotiation procedures" to read "General."

(h) In the last line of paragraph (a) of § 14-4.5202, the reference "41 CFR Subpart 1-3.2" is changed to read "Subpart 1-3.2 of this title."

(i) In the contract clause contained in paragraph (b) of § 14-7.650-5, the reference to ruling No. 95-0.07 is changed to Rule 026.02.20.007, and the reference to rule No. 95-0.09 is changed to Rule 026.02.20.011 effective, November 22, 1976.

(j) Section 14-16.850 is amended to add references to instructions pertaining to the use of Departmental forms and to make editorial changes.

(k) Paragraph (a) of § 14-19.108-50 is amended by deleting the period at the end of the paragraph and by adding the phrase "on future Government contracts."

(l) Paragraph (c) of § 14-26.404 is amended to correct typographical errors in the third and fourth lines.

(m) Paragraph (a) of § 14-30.410 is amended by changing the period at the end of the first sentence to a comma and adding the phrase "as follows:" at the end of the sentence.

(n) Subparagraph (c)(7) of § 14-30.414-2 is amended to correct the spelling of the word "paragraph."

(o) A new Subpart 14-30.7 and § 14-30.704 are added concerning forms for assignments of claims and notice of assignment.

Primary Author

The primary author of this rule is William Opdyke, Division of Acquisition and Grants, Office of Acquisition and Property Management, Washington, D.C. 20240, telephone 202-343-6431.

Waiver

It is the general policy of the Department of the Interior to allow time for interested parties to participate in the rulemaking process. However, the amendments contained herein are entirely administrative in nature and public participation would serve no useful purpose. Therefore, the public rulemaking process is waived in this instance in accordance with 5 U.S.C. 553.

Impact

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Accordingly, 41 CFR Chapter 14 is amended as stated below pursuant to the authority of the Secretary of the Interior contained in Section 205(c), 63

Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301.

Dated: January 16, 1981.

William L. Kendig,

Deputy Assistant Secretary of the Interior.

PART 14-1—GENERAL

Subpart 14-1.6—Debarred, Suspended and Ineligible Bidders

1. Paragraph (b) of § 14-1.603 is deleted and reserved as follows:

§ 14-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

* * * * *

(b) [Reserved]

2. Section 14-1.604-1 is revised to read as follows:

§ 14-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) The Assistant Secretary—Policy, Budget, and Administration, in seeking to debar a firm or individual (or any affiliate thereof) for a cause, shall furnish that party with a written notice of intent to debar, sent by registered mail:

(1) Setting forth the reasons for the proposed debarment;

(2) Giving the party an opportunity to submit evidence, within thirty (30) calendar days after receipt of the notice of intent to debar; and

(3) Advising that the party will be accorded a hearing if requested.

(b) Whatever response is received to the notice of intent to debar will be considered in determining whether debarment action will be made on the information available. Where a reply is received to the notice of intent to debar and evidence to refute debarment action is furnished but no hearing is requested, the information furnished will be considered in determining the action to be taken.

(c) If a hearing is requested, it shall be conducted by the Assistant Secretary—Policy, Budget, and Administration or his designee. The hearing will be held at a location convenient to the parties concerned as determined by the Assistant Secretary—Policy, Budget, and Administration and on a date and at a time stated. Subject to the provisions of 43 CFR Part 1, the firm or individual against whom the debarment action is taken may be represented by a duly authorized representative. Witnesses may be called to testify by either party. The hearing shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the hearing. A transcript of the hearing will be made and one copy will be furnished free to the party sought to be debarred.

(d) From the record established by the hearing, or if no hearing is held, upon the information submitted by the parties, the Assistant Secretary—Policy, Budget, and Administration shall determine whether debarment should be effected or the matter dismissed. The Assistant Secretary—Policy, Budget, and Administration shall advise the firm or individual in writing of this final decision within a reasonable time after the hearing is concluded. The notice imposing debarment will be sent by certified mail, return receipt requested. It will set forth the scope and period of the debarment together with the reasons for the debarment. The imposition of debarment upon a firm or an individual shall be final and conclusive except that the party debarred may seek relief in a court of competent jurisdiction.

Subpart 14-1.7—Small Business Concerns

1. The first sentence in § 14-1.704-1 is revised to read as follows:

§ 14-1.704-1 Small business adviser.

The Director, Office of Small and Disadvantaged Business Utilization, is designated as the small business adviser for the Department of the Interior. * * *

2. Section 14-1.704-2 is revised to read as follows:

§ 14-1.704-2 Small business representatives.

Business Utilization and Development Specialists, appointed by the head of each procuring activity, or designee, shall serve as small business representatives in accordance with the requirements of § 14-1.1302-8 of this chapter.

Subpart 14-1.9—Reporting Possible Antitrust Violations

Section 14-1.902 is amended by designating the first paragraph as paragraph (a); by making editorial changes; and by adding a paragraph (b) preceding the letter format. The letter format is retained and is not changed. As revised paragraphs (a) and (b) read as follows:

§ 14-1.902 Documents to be transmitted.

(a) Whenever any contracting officer has factual information leading him to believe or to suspect that bids received in response to a particular invitation evidence collusion on the part of two or more bidders, for example, rotated low bids, division of business, or other practices designed to eliminate competition or to restrain trade, a letter to the Justice Department should be submitted to the Office of the Solicitor for review containing a summary of the pertinent facts concerning the reported case and one copy of the following documents: (1) invitation for bids; (2) abstract of bids; (3) bid of the bidder(s) suspected of irregular practices; (4) name of the successful bidder and reason why the award was made to this firm; and (5) any other information available which might tend to establish possible violation of the antitrust laws. The additional information called for by § 1-1.902 of this title will not be included in transmittals to the Department of Justice except in those cases or classes of transactions specifically designated from time to time. Reports required by this paragraph are in addition to and not in lieu of the identical bid reports required by Subpart 1-1.16 of this title and § 14-1.1603 of this chapter.

(b) The letter to the Justice Department should be in the following format:

* * * * *

PART 14-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 14-2.4—Opening of Bids and Award of Contract

In the sixth line of § 14-2.407-8(d), the word "concern" is corrected to read "concerned." As amended, the sixth line of § 14-2.407-8(d) reads as follows:

§ 14-2.407-8 Protests against award.

* * * * *

(d) *Notice of protests.* * * * activity concerned, who will immediately * * *

* * * * *

PART 14-3—PROCUREMENT BY NEGOTIATION

Subpart 14-3.6—Small Purchases

Subparagraph (a)(6) of § 14-3.650-1 is revised to read as follows:

§ 14-3.650-1 Oral ordering method.

* * * * *

(a) * * *

(6) The purchase requirement is not for services, except that minor office machine repairs and work of a similar nature may be procured by oral order method in amounts not to exceed $2,500.

* * * * *

PART 14-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 14-4.10—Architect-Engineer Services

The section heading of § 14-4.1005-1 is revised to read as follows:

§ 14-4.1005-1 General.

* * * * *

Subpart 14-4.52—Appraisal Services (Real Property)

Paragraph (a) of § 14-4.5202 is revised to read as follows:

§ 14-4.5202 Negotiation authority.

(a) Real property appraisal services may be procured by negotiation under the applicable authorities contained in Subpart 1-3.2 of this title.

* * * * *

PART 14-7—CONTRACT CLAUSES

Subpart 14-7.6—Fixed-Price Construction Contracts

Paragraph (b) of the clause under paragraph (b) of § 14-7.650-5 is revised to read as follows:

§ 14-7.650-5 Local taxes.

* * * * *

(b) * * *

Texas Limited Sales, Excise and Use Tax

(a) * * *

(b) The contractor performing this contract may purchase, rent, or lease free of such tax all materials, supplies, and equipment used or consumed in the performance of the contract by issuing to its supplier an exemption certificate complying with State Comptroller's Rule 026.02.20.007. Any such exemption certificate issued by the Contractor in lieu of the tax shall be subject to the provisions of State Comptroller's Rule 026.02.20.011, effective November 22, 1976.

PART 14-16—PROCUREMENT FORMS

Subpart 14-16.8—Miscellaneous Forms

Section § 14-16.850 is revised to read as follows:

§ 14-16.850 Department of the Interior forms.

The following Department of the Interior forms will be used as indicated, and are stocked as a supply item in Storage and Shipping, Office of Administrative Services, Department of the Interior, Washington, D.C. 20240.

(a) *DI-83, Notice of Assignment.* This form shall be used to provide appropriate notice of assignment of payments under contract as provided in § 14-30.704 of this chapter.

(b) *DI-84, Instrument of Assignment.* This form shall be used to make assignment of payments due under contracts as provided in § 14-30.704 of this chapter.

(c) *DI-137, Release of Claims.* This form shall be used to obtain a release of claims under contracts as provided in § 14-1.350 of this chapter.

PART 14-19—TRANSPORTATION

Subpart 14-19.1—General

The last sentence of paragraph (a) of § 14-19.108-50 is revised to read as follows:

§ 14-19.108-50 Contractor compliance.

(a) * * * The notice shall include a statement to the effect that failure to comply with the provisions for use of U.S. flag vessels may result in a determination of nonresponsibility on future Government contract requirements.

* * * * *

PART 14-26—CONTRACT MODIFICATIONS

Subpart 14-26.4—Novation and Change of Name Agreements

Paragraph (c) of § 14-26.404 is revised to read as follows:

§ 14-26.404 Processing novation and change of name agreements.

* * * * *

(c) An Interior contracting officer who is advised by a contractor of the need for a novation or change of name agreement shall contact all affected Interior contracting officers (and is encouraged to contact all other affected Government contracting officers) to determine whether or not they desire him to act as their representative for the purposes set forth in § 1-26.404(e) of this title.

PART 14-30—CONTRACT FINANCING

Subpart 14-30.4—Advance Payments

1. Paragraph (a) of § 14-30.410 is revised to read as follows:

§ 14-30.410 Findings, determinations, and authorization.

(a) Federal Management Circular 73-7 dated December 19, 1973 (formerly Office of Management and Budget Circular No. A-101 dated January 9, 1971), provides policies and procedures for establishing greater consistency among Federal agencies in the administration of grants, contracts or other agreements with educational institutions in the United States for research projects, as follows:

A. In view of the nonprofit position of educational institutions, and the stated Government objective of strengthening the research capabilities of these institutions, all agencies shall make advance payments in reasonable amounts on research projects whether under a contract or grant, whenever practical, in all cases where the agency is authorized by law to do so.

B. The Treasury Department's letter of credit procedure should be used as the means of furnishing advance payments, whenever feasible. The use of the letter of credit procedure to the maximum extent possible will serve to limit the number of different methods to be used by the institution in obtaining funds, and will also limit the amount of advances to minimum amounts so as to reduce financing costs to the Government.

* * * * *

2. Subparagraph (c)(7) introductory text of § 14-30.414-2 is revised to read as follows:

§ 14-30.414-2 Contract provisions for advance payments.

* * * * *

(c) * * *

(7) Paragraph (q) of § 1-30.414-2 will be modified as follows:

* * * * *

Subpart 14-30.7—Assignment of Claims.

1. The Table of Contents for Part 14-30 is amended by adding a new Subpart 14-30.7 and § 14-30.704 as follows:

Subpart 14-30.7—Assignment of Claims

Sec.

14-30.704 Forms for assignment and notice of assignment.

2. A new Subpart 14-30.7 is added as follows:

Subpart 14-30.7—Assignment of Claims

§ 14-30.704 Forms for assignment and notice of assignment.

The following Department of the Interior forms are prescribed for use by all procuring activities.

(a) *DI-83, Notice of Assignment.* This form shall be used to provide appropriate notice of assignment of payments under contracts. Instructions for the use of the form are contained on the reverse side of the form.

(b) *DI-84, Instrument of Assignment.* This form will be used to make assignment of payments under contracts. Procuring activities will observe the instructions contained in

Subpart 1–30.7 of this title concerning instruments of assignment.

[FR Doc. 81–2769 Filed 1–23–81; 8:45 am]
BILLING CODE 4310–10–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final Rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii Call Toll Free (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1938 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Alabaster, Shelby County (FEMA–5896).	Buck Creek	Just upstream of Industrial Road (State Highway 66)	*452
			Just downstream of 1st Avenue West (State Highway 44)	*461
			Just downstream of 6th Avenue Southwest	*466
		Peavine Creek	Just upstream of Interstate Highway 65	*455
			Just upstream of County Road 11	*460
Maps available for inspection at City Hall, P.O. Box 277, Alabaster, Alabama 35007.				
Alabama	Baldwin County, unincorporated areas (FEMA–5817).	Mobile River	At the confluence of Mobile River and Tensaw River	*18
		Mobile Bay	At the Interstate Route 65 bridge over Little Lizard Creek	*11
			At the confluence of Crab Creek and Raft River	*11
			Approximately 100 feet downstream of the State Route 225 bridge over Bay Minette Creek.	*12
			Approximately 100 feet downstream of the State Route 42 bridge over Rock Creek (north of Fairhope).	*12
			At the confluence of the Raft River and Little Bay John	*13
			At the Interstate Route 10 bridge over the Tensaw River	*14
		Perdido Bay	Approximately 100 feet downstream of the County Route 99 bridge over Peterson Branch.	*7
			Approximately 500 feet shoreward (due east) from the intersection of County Road 99 and U.S. Route 98.	*8
			At Point Ono	*9
		Gulf of Mexico	Approximately 500 feet south of the intersection of County Road 6 and State Route 180 (west of Gulf Shores).	*12
			At Alligator and South Islands within the Shelby Lakes	*14
			Seaward from the Coastline of the Gulf of Mexico	*18
Maps available for inspection at Commissioner's Office, P.O. 148, Bay-Minette, Alabama 36507.				
Alabama	Bayou La Batre (City), Mobile County (FEMA–5817).	Mississippi Sound	Intersection of North Coden Avenue and Sutton Drive	*13
			Intersection of Alba Street and Lottie Avenue	*13
			Intersection of Little River Street and Powell Avenue	*14
			Along southern corporate limits at mouth of Bayou La Batre	*21
Maps available for inspection at City Hall, City of Bayou La Batre, 33 South Wintzell Avenue, Bayou La Batre, Alabama 36509.				
Alabama	City of Bessemer, Jefferson County (FEMA–5799).	Valley Creek	Just downstream of 19th Street	*463
			Intersection of U.S. Highway 11 and Brewer Drive	*485
		Fivemile Creek	Just upstream of Old U.S. Highway 11 (Tuscaloosa Highway)	*482
		Unnamed Creek 38	Just upstream of U.S. Highway 11	*477
			Just upstream of Lakeridge Drive	*480
		Unnamed Creek 41	Just upstream of Carolina Avenue	*522
		Halls Creek	Just upstream of 6th Avenue	*479
			Just downstream of the Southern Railway	*494
			Just upstream of the Southern Railway	*499
		Shades Creek	Just upstream of Morgan Road	*514
Maps available for inspection at City Hall, 1800 Third Avenue N, Bessemer, Alabama 35020.				
Alabama	Colbert County (unincorporated areas) (FEMA–5895).	Spring Creek	50 feet upstream from the center of Old Jackson Highway (County Road 55).	*439
			50 feet upstream from the center of Jackson Highway (U.S. Highway 43).	*456
		Dry Creek	50 feet upstream from the center of Southern Railway	*486

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			50 feet upstream from the center of Wilson Dam Highway (State Highway 133).	*493
		Pond Creek	50 feet upstream from the center of Second Street Road (State Highway 184).	*518
			50 feet upstream from the center of Gnat Pond Road (County Road 61).	*534
Maps available for inspection at Colbert County Courthouse, Tuscumbia, Alabama.				
Alabama	Fairhope (City), Baldwin County (FEMA-5817).	Mobile Bay	Approximately 400 feet west of the intersection of Section Street and U.S. Highway 98.	*11
			Intersection of Mobile Avenue and Pier Street	*12
			Approximately 125 feet west of the intersection of Kiefer Street and North Bayview Avenue.	*12
			Approximately 250 feet west of the intersection of Blakeney Street and North Bayview Avenue.	*14
			Approximately 500 feet west of the intersection of Mobile Avenue and Tensaw Avenue.	*14
Maps available for inspection at City Hall, City of Fairhope, P.O. Box 429, Fairhope, Alabama 36532.				
Alabama	Gulf Shores (Town), Baldwin County (FEMA-5817).	Gulf of Mexico	Intersection of Sunset Drive and Magnolia Drive	*12
			Intersection of Alabama Highway 59 and West 12th Avenue	*12
			Intersection of Ark Road and Alabama Highway 59	*13
			Intersection of 1st Avenue and West 8th Street	*14
			Intersection of West Gulf Shores Boulevard and West 11th Street	*15
			Approximately 300 feet shoreward from the intersection of West Gulf Shores Boulevard and West 11th Street.	*16
			Approximately 500 feet shoreward from the intersection of East Gulf Shores Boulevard and East 1st Street.	*16
			Approximately 600 feet shoreward from the intersection of West 9th Street and West Gulf Shores Boulevard.	*18
			Approximately 600 feet shoreward from the intersection of East 2nd Street and East Gulf Shores Boulevard.	*18
		Mobile Bay	Intersection of East 6th Street and East 23rd Avenue	*11
			Intersection of Wedgewood Drive and West 3rd Street	*11
			Approximately 6,500 feet west of the intersection of West 24th Avenue and West Third Street.	*13
Maps available at Town Hall, Town of Gulf Shores, P.O. Box 299, Gulf Shores, Alabama 36542.				
Alabama	City of Jasper, Walker County (FEMA-5895).	Town Creek	Just upsteam of San Francisco Railway	*305
			Just upstream of 19th Street	*315
			Just upstream of Wright Street	*327
		Yanyard Creek	Just upsteam of 19th Street	*323
			Just upstream of Frank Evans Road	*331
		Poley Creek	Just upstream of 36th Avenue	*384
			Just upstream of Shererwood Drive	*390
		Poley Creek Tributary 1	Approximately 1,300 feet upstream of Confluence with Poley Creek	*386
Maps available for inspection at City Engineer's Office, City Hall, 400 West 19th Street, Jasper, Alabama 35501.				
Alabama	Unincorporated areas of Lawrence County (FEMA-5920).	Big Nanle Creek	Just upstream of Alabama State Highway 20	*561
			Just downstream of County Highway 29 (Harmony Road)	*569
		Muddy Fork	Just upstream County Road bridge	*597
			Confluence of Muddy Fork, Crow Branch and Lateral 8	*612
		Crow Branch	Just upstream of County Highway 21 (Old Florence Road)	*616
		Lateral 8	Just upstream of Private Road	*617
Maps available for inspection at Lawrence County Courthouse Annex, Moulton, Alabama 35650.				
Alabama	Mobile (City), Mobile County (FEMA-5817).	Mobile Bay	Intersection of Dauphin Island Parkway and Alba Avenue	*11
			Intersection of Dog River Drive and Perch Drive	*11
			Intersection of Dauphin Island Parkway and Hannon Road	*11
			Intersection of Jackson Street and Dempsey Street	*11
			Intersection of South Old Water Street and Madison Street	*12
			Confluence of Spanish River and Mobile River	*13
			Northern end of Polecat Bay	*14
			Little Sand Island	*16
Maps available for inspection at City Hall, City of Mobile, P.O. Box 1827, Mobile, Alabama 36601.				
Alabama	Mobile County, unincorporated areas (FEMA-5817).	Mobile Bay	Interstate Route 65 bridge over Mobile River	*11
			Interstate Route 65 bridge over Gunnison Creek	*11
			Confluence of Sara Bayou and Gunnison Creek	*11
			Approximately 100 feet upstream of the Dauphin Island Parkway bridge over Middle Fork Deer River.	*11
			Approximately 100 feet downstream of the Dauphin Island Parkway bridge over Middle Fork Deer River.	*12
			Approximately 100 feet upstream of the Cedar Point Road bridge over Dog Creek.	*15
			Approximately 750 feet east along Bay Road from its intersection with Kerns Road.	*14
			Approximately 100 feet downstream of the Cedar Point Road bridge over the Dog River.	*16

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 1,000 feet east of the intersection of Bay Road and Hammock Road.	*16
		Mississippi Sound	Approximately 1,000 feet south of the intersection of Cuthbert Road and State Route 163.	*13
			Approximately 100 feet south of the intersection of Russel Avenue and State Route 188.	*14
			Approximately 200 feet downstream of the State Route 188 bridge over Bayou Como.	*15
			Approximately 1,000 feet south of the intersection of Rabby Road and State Route 188.	*16
			At the mouth of Bayou La Fourche Bay	*21
			At Barton Island	*21
		Gulf of Mexico	At the intersection of Bienville Boulevard and Audabon Drive on Dauphin Island.	*13
			At the western end of Dauphin Island	*18
Maps available at Mobile County Courthouse, Mobile, Alabama 36601.				
Alabama	Town of Pelham, Shelby County (FEMA-5895).	Bishops Creek	Just upstream of Seaboard Coast Line Railroad	*418
			Just upstream of Bearden Road	*435
			Just upstream of Cross Creek Trail	*445
			Just upstream of Chandalar Drive	*447
		Buck Creek	Just upstream of Louisville and Nashville Railroad	*423
			Just upstream of Alabama Highway 52	*435
		Coales Creek	Just upstream of Seaboard Coast Line Railroad	*442
		Hogpen Creek	Just upstream of I-65	*451
			Just upstream of Alabama Highway 52	*465
		Peavine Creek	Just upstream of Louisville and Nashville Railroad	*436
			Just upstream of Alabama Highway 31	*436
Maps available for inspection at City Hall, Pelham, Alabama 35124.				
Alabama	Town of Vincent, Shelby County (FEMA-5895).	Spring Creek Blue/Spring Branch/Tributary Two.	Just upstream of U.S. Highway 231	*422
			Just upstream of Southern Railroad	*438
			Just downstream of confluence of Tributary Two with Blue Spring Branch.	*451
			Just upstream of County Highway 81 crossing of Tributary Two	*468
		Upper Spring Creek	Just upstream of Southern Railway crossing near Mistletoe Lane	*438
Maps available for inspection at City Hall, Main Street, Vincent, Alabama 35178.				
Arkansas	City of Jonesboro, Craighead County (FEMA-5818).	Christian Creek	Approximately 200 feet upstream of Matthews Avenue	*299
			Just upstream of Nettleton Avenue	*306
		Lateral No. 3	Just upstream of State Highway 18	*247
			Approximately 250 feet downstream of Missouri-Pacific Railroad	*249
		Lost Creek	Just upstream of Culberhouse Street	*294
			Just downstream of Church Street	*297
		Moore's Ditch Lateral	Just upstream of Missouri-Pacific Railroad	*250
		Higginbottom Creek	Just upstream of State Highway 1	*258
			Approximately 150 feet upstream of State Highway 39	*298
		Whiteman's Creek	Just upstream of Missouri-Pacific Railroad	*250
			Approximately 100 feet downstream of Carroway Road	*270
		Turtle Creek	Just upstream of Missouri-Pacific Railroad	*250
			Just downstream of Aggie Road	*275
		Turtle Creek Lateral	Just upstream of Carroway Road	*277
			Just upstream of West College Drive	*283
		Lateral No. 5	Just upstream of the most downstream St. Louis and Southwestern Railroad Crossing.	*268
			Just upstream of the most upstream St. Louis and Southwestern Railroad Crossing.	*288
Maps available for inspection at City Hall, 314 West Washington Street, Jonesboro, Arkansas 72401.				
Arkansas	City of Springdale, Benton and Washington Counties (FEMA-5920).	Spring Creek	Just downstream of U.S. Highways 62 and 71	*1,270
			Just downstream of Shiloh Street	*1,288
			Just upstream of Shiloh Street	*1,297
			Just downstream of Old Missouri Road	*1,330
		Brush Creek	Just upstream of Gutensohn Road	*1,329
		Tributary 1	Just upstream of Shiloh Street	*1,289
			Just upstream of Mill Street	*1,310
			Just downstream of Jefferson Street	*1,326
		Tributary 2	Approximately 150 feet upstream of U.S. Highways 62 and 71	*1,271
		Tributary 3	Morris Avenue (Extended)	*1,244
		Tributary 4	Just upstream Shady Grove Road	*1,237
			Just upstream of Unnamed Road (Approximately 350 feet downstream of U.S. Highway 71).	*1,294
		Tributary 5	Garden Center Road (extended)	*1,238
			Approximately 250 feet downstream of U.S. Highway 71	*1,244
Maps available for inspection at Mayor's Office, City Hall, 201 North Spring Street, Springdale, Arkansas 79592.				
Connecticut	East Lyme (Town), New London County (Docket No. FEMA-5895).	Long Island Sound	Entire Shoreline	*11
		Fourmile River	Confluence with Long Island Sound	*11
			State Route 156/West Main Street	*11
			Downstream of Breached Dam, located approximately 1.2 miles from confluence with Long Island Sound.	*16
			Upstream of Breached Dam, located approximately 1.2 miles from confluence with Long Island Sound.	*25

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Downstream Colton Road	*46
			Upstream Colton Road	*49
			Downstream of Green Valley Lakes Road	*55
			Approximately 700' upstream Overbrook Road	*60
			Approximately 3,730' upstream of Overbrook Road	*70
			Downstream Boston Post Road	*75
			Upstream Boston Post Road	*82
		Pattagansett River	Confluence with Long Island Sound	*11
			Downstream Brook Road	*12
			Upstream Brook Road	*13
			Upstream Bush Pond Dam (Breached)	*20
			Upstream Roxbury Road	*25
			Downstream Society Road	*29
			Downstream Industrial Park Road	*35
			Upstream U.S. Route 1/Interstate 95	*41
			Upstream Wooden Bridge located 990 feet downstream of State Route 51.	*45
			Upstream State Route 51	*50
			Approximately 50' downstream of Pattagansett Lake Dam	*58
			Approximately 20' downstream of Pattagansett Lake Dam	*62
		Latimer Brook	Confluence with Niantic River	*11
			Approximately 1,160' downstream of U.S. Route 1	*16
			Approximately 830' downstream of U.S. Route 1	*21
			Approximately 490' downstream of U.S. Route 1	*26
			Approximately 150' downstream of U.S. Route 1	*32
			Upstream U.S. Route 1	*37
			Upstream State Route 51/Boston Post Road	*47
			Approximately 2,750' downstream of Colony Road	*57
			Approximately 630' downstream of Colony Road	*62
			Upstream Colony Road	*70
			Approximately 800' downstream of Wooden Bridge	*73
			Upstream Wooden Bridge	*78
			Approximately 1,980' upstream of Wooden Bridge	*79
Maps available for inspection at the Office of the Town Clerk, and Town Engineer, Town Hall, East Lyme, Connecticut.				
Florida	Martin County (unincorporated areas) (FEMA-5893).	Atlantic Ocean	Intersection of Jupiter Road and Merritt Way	*6
			Southern side of intersection of Bridge Road and Laurel Lane	*6
			At northern county limits	*7
			Intersection of Prophet Lane and Jordan Way	*7
		St. Lucie River	Dyer Point Road	*7
			Intersection of Murphy Road and Bessey Creek Terrace	*7
			Intersection of Gaines Avenue and Fork River Drive	*7
			West side of intersection of Millwood Terrace and Caguga Terrace	*7
			Intersection of Indian Street and St. Lucie Boulevard	*8
			Intersection of River Terrace and St. Lucie Boulevard	*8
			Intersection of Railway Avenue and Lincoln Street	*8
		Indian River	Intersection of Chardon Street and Indian River Drive	*7
			Intersection of Ocean Boulevard and MacArthur Boulevard	*7
			South side of intersection of 42nd Street and Indian River Drive	*8
			Intersection of Palmer Street and Sewalls Point Road	*8
		Loxahatchee River	At southernmost county limits (approximately 500 feet east of Interstate Highway 95).	*8
		Lake Okeechobee	Shoreline at southern county limits	*23
			Shoreline at northern corporate limits	*25
		Ponding	Approximately 1,000 feet north along Green River Parkway from its intersection with Jensen Beach Road.	*17
			Approximately 600 feet west along Dixon Way from its intersection with NE 9th Avenue.	*17
Maps available for inspection at 50 Kindred Street, Stuart, Florida.				
Florida	Ocean Breeze Park (Town), Martin County (FEMA-5893).	Indian River	Intersection of Little Bit Lane and Indian Drive	*8
Maps available for inspection at P.O. Box 846, Jensen Beach, Florida.				
Georgia	City of Buford, Gwinnett and Hall Counties (FEMA-5883).	Suwanee Creek	Just upstream of Sudderth Road	*995
			Approximately 150 feet downstream of Maddox Road	*1,004
			Approximately 300 feet downstream of Thomas Mill Road	*1,043
		Suwanee Creek Tributary 1	Just downstream of U.S. Highway 23	*1,000
		Suwanee Creek Tributary 2	Just downstream of Georgia Highway 13	*1,037
Maps available for inspection at Buford City Manager's Office, City Hall, 30 Garnett Street, Buford, Georgia.				
Georgia	City of Clarkston, De Kalb County (FEMA-5895).	South Fork Peachtree Creek	Just upstream of Casa Drive	*941
			Just upstream of Montreal Road	*954
Maps available for inspection at City Clerk's Office, City Hall, 3921 Church Street, Clarkston, Georgia 30021.				
Georgia	City of Pine Lake, De Kalb County (FEMA-5893).	Snapfinger Creek	Just upstream of Bearer Road	*926
			Just upstream of Spruce Drive	*927
Maps available for inspection at City Hall, 300 Courthouse Drive, Pine Lake, Georgia 30072.				

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V), Antioch, Lake County (Docket No. FEMA-5895).	Sequoit Creek	Just upstream State Route 173	*742
			Just downstream Highview Drive	*743
			Just upstream Highview Drive	*748
			Just upstream Tiffany Road	*755
			Just upstream Cunningham Drive	*762
			About 1.2 miles upstream Soo Line Railroad	*768
		Silver Lake Drain	At mouth at Sequoit Creek	*766
			About 0.44 mile upstream of mouth	*766
		Cross Lake Tributary	At mouth at Cross Lake	*813
			About 100 feet upstream Bridgewood Drive	*814
		Antioch Lake Drain	Just upstream Hillside Avenue	*749
			Just upstream outlet for Lake Antioch	*757
		Cross Lake	Shoreline	*813
		Lake Marie	Shoreline	*742
		Antioch Lake	Shoreline	*757
		Lake Catherine	Shoreline	*742
	Maps available for inspection at the Village Hall, 874 Main Street, Antioch, Illinois 60002.			
Illinois	Bartlett Village, Cook and Du Page Counties (Docket No. FEMA-5895).	West Branch Du Page River	Upstream Army Trail Road	*738
			Downstream Shick Road	*742
			Upstream Illinois Central Gulf Railroad	*746
			Upstream of the upstream boundary of Wayne Grove Forest Preserve	*753
			Upstream Corporate Limits	*759
		Brewster Creek	Downstream Corporate Limits	*774
			Upstream State Route 59	*786
		Country Creek	Approximately 500' upstream from confluence of Country Creek to West Branch Du Page River.	*749
			Approximately 2,000' downstream of Stearns Road	*753
			Upstream of Stearns Road	*768
			Upstream of Brookside Drive	*773
			Downstream of Devon Avenue	*782
	Maps available for inspection at the Bartlett Village Hall, 228 South Main Street, Bartlett, Illinois.			
Illinois	(V), Bluffs, Scott County (Docket No. FEMA-5895).	Wolf Run Creek	Just downstream of Rockwood Street and approximately 420 feet downstream of corporate limits.	*460
			Approximately 130 feet downstream of State Route 100	*472
			Just upstream of State Route 100	*473
			Just downstream of the eastern corporate limits	*481
	Maps available for inspection at the Village Hall, Bluffs, Illinois 62621.			
Illinois	Des Plaines (City), Cook County (Docket No. FI-1020).	Des Plaines River	Interstate 294 (Upstream side)	*628
			Miner Street (Upstream side)	*630
			Rand Road (Upstream side)	*631
			Golf Road (Upstream side)	*633
			Central Road	*634
		Willow Creek	Higgins Road	*638
			Soo Line Railroad (Upstream side)	*640
			U.S. Route 45 (Downstream side)	*641
			Wolf Road (Upstream side)	*646
			Confluence of Higgins Creek	*647
		Higgins Creek	Confluence with Willow Creek	*647
			New Mount Prospect Road (Upstream side)	*650
			Touhy Avenue (Downstream side)	*651
			Wille Road (Upstream side)	*656
			Elmhurst Road (Upstream side)	*657
			Upstream Corporate Limits	*660
		Weller Creek	Soo Line Railroad	*640
			Seegers Road	*641
			Approximately 850' downstream of Wolf Road at culvert outlet	*642
			Approximately 250' upstream of Wolf Road at culvert inlet	*646
			Washington Street	*647
			Golf Road (Upstream side)	*650
			Upstream Corporate Limits	*651
		Farmer's Creek	Busse Highway	*630
			Rand Road (Upstream side)	*631
			Dempster Street	*632
			Church Street (Upstream side)	*633
			Upstream Corporate Limits	*635
		Prairie Creek	Confluence with Farmer's Creek	*633
			Upstream Corporate Limits	*634
		Feehanville Ditch	U.S. Route 45 (Upstream side)	*635
			Soo Line Railroad (Upstream side)	*644
			Upstream Corporate Limits	*645
	Maps available for inspection at the Des Plaines City Hall, Des Plaines Civic Center, 1420 Miner Street, Des Plaines, Illinois.			
Illinois	(V), Fayetteville, St. Clair County (Docket No. FEMA-5886).	Kaskaskia River	About 1,050 feet downstream of U.S. Route 15	*396
			About 1,450 feet upstream of U.S. Route 15	*397
	Maps available for inspection at the Village Clerk's Office, Fayetteville, Illinois and at the Village Hall, Fayetteville, Illinois 62258.			
Illinois	(V), Liverpool, Fulton County (Docket No. FEMA-5895).	Illinois River	Entire length of community along Illinois River	*455
	Maps available for inspection at the Village Clerk's Office, Liverpool, Illinois 61543.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(C), Mascoutah, St. Clair County (FEMA-5883).	Silver Creek	Approximately 3,500 feet downstream of Louisville and Nashville Railroad.	*422
			Just downstream of State Route 177	*423
	Maps available for inspection at the City Manager's Office, Municipal Building, 3 West Main Street, Mascoutah, Illinois 62258.			
Illinois	(C), Waukegan, Lake County (Docket No. FEMA-5895).	Des Plaines River	At southern corporate limits (about 2,700 feet downstream of unnamed road).	*600
			About 700 feet upstream of St. Sava Monastery footbridge over Des Plaines River.	*661
		Suburban Country Club Tributary	At southern corporate limits	*665
			Just downstream of Shirley Drive	*666
			Just downstream of Chicago and North Western Railroad	*669
		Bull Creek	About 980 feet downstream DeWoody Avenue	*653
			Just upstream DeWoody Avenue	*659
			Just downstream Beach Road	*663
			Just upstream Beach Road	*669
			About 500 feet upstream Beach Road	*670
			About 550 feet upstream Beach Road	*671
		North Shore Ditch	Just upstream of Montesano Avenue and about 200 feet west of Western Avenue.	*648
			Just upstream Blanchard Road	*651
			About 2,450 feet upstream Blanchard Road	*654
		Waukegan River	Just upstream Glen Flora Avenue	*651
			Approximately 150 feet upstream Commonwealth Edison Access Road.	*653
			Just downstream Sunset Avenue	*656
		Lake Michigan	Shoreline affecting City of Waukegan	*584
	Maps available for inspection at the City Clerk's Office and Planning Commission, Municipal Building, 106 North Utica, Waukegan, Illinois 60085.			
Indiana	(T), Cayuga, Vermillion County (FEMA-5895).	Vermilion River	About 2,200 feet downstream northern corporate limits	*498
			At upstream corporate limits	*501
	Maps available for inspection at the Town Hall, Cayuga, Indiana 47928.			
Indiana	(T), Newport, Vermillion County (Docket No. FEMA-5895).	Little Vermilion River	Just upstream of the Missouri Pacific Railroad	*494
			About 650 feet upstream from the upstream corporate limit	*499
	Maps available for inspection at the Newport Firehouse, P.O. Box 65, Newport, Indiana 47966.			
Iowa	Cambridge (City), Story County (Docket No. FEMA-5874).	South Skunk River	Downstream Corporate Limits	*848
			Confluence of Ballard Creek	*851
			County Trunk E63 Bridge	*852
			Upstream Corporate Limits	*853
	Maps available for inspection at the Cambridge City Hall, Cambridge, Iowa.			
Iowa	(Unincorporated), Lee County (Docket No. FEMA-5825).	Dry Creek	At City of Fort Madison northern corporate limits	*572
			About 2,200 feet upstream of City of Fort Madison corporate limits	*584
		Mississippi River	Just upstream City of Keokuk corporate limits	*519
			Upstream county boundary	*531
	Maps available for inspection at the Lee County Engineer's Office, 710 Avenue F, Fort Madison, Iowa 52627.			
Kentucky	Unincorporated areas of Boone County (FEMA-5895).	Ohio River	Just upstream of Gunpowder Creek	*481
			Just upstream of Arnold Creek	*483
			Just upstream of Woolper Creek	*486
			Just upstream of Wilson Creek	*489
			Just upstream of Sand Run	*491
			Just upstream of Muddy Creek	*493
	Maps available for inspection at Boone County Courthouse, Building No. 9, Union Square, Burlington, Kentucky 41005.			
Kentucky	City of Paris, Bourbon County (FEMA-5895).	Stoner Creek	Just upstream of Louisville and Nashville Railroad	*795
			Just upstream of North Main Street (U.S. Highways 68 and 460)	*797
		Houston Creek	Just upstream of Lilleston Avenue	*798
			Just downstream of Georgetown Road	*807
			Just downstream of U.S. Highway 27	*816
			Just upstream of Lexington Road (U.S. Highways 27 and 68)	*829
	Maps available for inspection at City Hall, 800 Pleasant Street, Paris, Kentucky 40361.			
Louisiana	City of Ruston, Lincoln Parish (FEMA-5912).	Chautauqua Creek	Just upstream of West Kentucky Avenue	*202
		Choudrant Creek	Just upstream of Illinois Central Railroad	*211
		Colvin Creek	Just upstream of Frazier Road	*188
			Just upstream of East Kentucky Avenue	*208
		Colvin Creek Tributary	Just upstream of East Kentucky Avenue	*205
		Shepherd Creek	Just upstream of Vaughn Avenue	*267
	Maps available for inspection at Inspection Station, City Hall, 401 N. Trenton St., Rouston, Louisiana 71270.			
Louisiana	City of Springhill, Webster Parish (FEMA-5912).	Little Crooked Creek	Just upstream of 7th Street Southeast	*217
			Just upstream of Machen Drive	*226
			Just upstream of Welcome Road	*230
		West Branch of Little Crooked Creek.	Just downstream of Kansas City Southern Railroad	*227
			Just downstream of 7th Street South-West	*237

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		East Branch of Little Crooked Creek.	Approximately 250 feet upstream of Jessica Drive	*233
Maps available for inspection at City Hall, 101 Machen Drive, Springhill, Louisiana 71075.				
Maryland	Crisfield (City), Somerset County (Docket No. FEMA-5874).	Chesapeake	Entire Shoreline of Crisfield	*5
Maps available for inspection at the City Hall, Main Street, Crisfield, Maryland.				
Maryland	Somerset County (Docket No. FEMA-5886).	Chesapeake Bay	Wicomico River from mouth of Monie Bay to confluence of Johnson Creek.	*6
			Monie Bay (Entire Area)	*6
			Tangier Sound between Deal Island and Mouth of the Wicomico River	*6
			Northeastern shoreline of South Marsh Island between Thomas Island Gut and Old Ground Marsh.	*6
			Northwestern shoreline of South Marsh Island between Old Ground Marsh and Pry Cove.	*6
			Manokin River between confluence with Tangier Sound and Top Point	*6
			Kedges Straits between Smith Island and South Marsh Island	*5
			Tangier Sound between confluence with Manokin River and confluence with Cedar Straits.	*5
			Big Annemessex River from confluence with Tangier Sound to River Road.	*5
			Little Annemessex River from Old House Cove to confluence with Daughery Creek.	*5
			Pocomoke Sound between Broad Creek and Fair Island	*5
Maps available for inspection at the Somerset County Courthouse, 21 West Prince William Street, Princess Anne, Maryland.				
Massachusetts	East Brookfield (Town), Worcester County (Docket No. FEMA-5883).	Quaboag Pond	Entire shoreline within corporate limits	*606
		Quacumquasit Pond	Entire shoreline within corporate limits	*606
		East Brookfield River	Entire shoreline within corporate limits	*607
		Lake Lashaway	Entire shoreline within corporate limits	*618
		Severmile	Confluence with East Brookfield River	*607
			Downstream Podunk Street	*613
			Upstream corporate limits	*624
		Great Brook	Confluence with East Brookfield River	*607
			Downstream Draper Street	*620
			Downstream East Sturbridge Road	*624
		Dunn Brook	Downstream corporate limits	*609
			Upstream corporate limits	*616
		Perry Pond Stream	Confluence of Dunn Brook	*613
			Upstream corporate limits	*623
Maps available for inspection at the Town Hall, East Brookfield, Massachusetts.				
Massachusetts	Monterey (Town), Berkshire County (Docket No. FEMA-5853).	Lake Buel	Entire shoreline within community	*913
		Konkapot River	Downstream Corporate Limits	*1,002
			Approximately 2,500' downstream of River Road	*1,080
			Upstream River Road	*1,155
			Upstream Curtis Road	*1,161
			Approximately 9,000' upstream of Curtis Road	*1,183
			Downstream Dam	*1,245
			Upstream Dam	*1,253
			Downstream State Route 23	*1,253
			Upstream State Route 23	*1,259
			Downstream Beartown Mountain Road	*1,278
			Upstream Beartown Mountain Road	*1,288
			Upstream dam at Lake Brewer	*1,289
Maps available for inspection at the Office of the Planning Department, Monterey, Massachusetts.				
Michigan	(Twp.), Hastings, Barry County (Docket No. FEMA-5895).	Thornapple River	Western corporate limits	*785
			About 3,600 feet downstream River Road	*793
			Just upstream McKeowin Road	*799
			About 850 feet upstream Charleton Road	*803
		Fall Creek	Downstream corporate limits	*813
			About 760 feet upstream Campground Road (downstream crossing)	*831
			About 100 feet downstream Campground Road (upstream crossing)	*841
			About 5,330 feet upstream Campground Road (upstream crossing)	*844
Maps available for inspection at the Township Hall, 3853 South Broadway, Hastings, Michigan 49058.				
Michigan	(Twp.), Ypsilanti, Washtenaw County (Docket No. FEMA-5895).	Huron River	Just upstream Rawsonville Road	*654
			Just downstream of Ford Dam	*658
			Just upstream of Ford Dam	*686
			Approximately 2,600 feet downstream of Le Forge Road	*704
			Just downstream of Le Forge Road	*707
			Just downstream of Conrail	*718
			Approximately 500 feet upstream of Superior Road	*720
		Paint Creek	Just upstream of Bemis Road	*693
			Approximately 600 feet downstream of retention pond weir	*735
			Just upstream of retention pond weir	*742

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just downstream of Interstate 94	*750
			Just upstream of Interstate 94	*755
			Just downstream of Michigan Avenue	*756
			Just upstream of Michigan Avenue	*760
			About 900 feet upstream of Cobble Creek Road	*762
		West Branch of Paint Creek	Just upstream of Bemis Road	*700
			About 200 feet downstream of Merritt Road	*710
			About 500 feet upstream of Merritt Road	*712
		Ford Lake	Shoreline in Township of Ypsilanti	*686
Maps available for inspection at the Township Hall, 7200 Huron River Drive, Ypsilanti, Michigan 48197.				
Minnesota	(Unincorporated), Morrison County (Docket No. FEMA-5883).	Skunk River	About one mile upstream State Highway 25	*1,140
			Just upstream of County Road 251	*1,151
			Just downstream of County Highway 39	*1,156
		Little Elk River	Just upstream of County Road 211	*1,143
			Just downstream of County Road 209	*1,159
			Just upstream of County Road 209	*1,161
			At the City of Randall eastern corporate limits	*1,165
		South Branch Little Elk River	At the southern corporate limit for the City of Randall, about 2,000 feet downstream of State Highway 6.	*1,173
			Just downstream of State Highway 6	*1,174
		Swan River	About 4.9 miles above State Highway 238	*1,123
			Just downstream of County Highway 18	*1,124
		Platte River	Just upstream of State Highway 27	*1,114
			At the confluence of Little Mink Creek	*1,117
		Mississippi River	At the southern corporate limits of the City of Little Falls	*1,092
Maps available for inspection at Office of the County Zoning Administrator, Morrison County, Morrison County Courthouse, Little Falls, Minnesota 56345.				
Minnesota	(C), Princeton, Mille Lacs and Sherburne Counties (Docket No. FEMA-5895).	Rum River	About 2.3 miles downstream State Highway 95	*961
			About 300 feet upstream of State Highway 95	*965
			About 0.9 mile upstream of State Highway 95	*967
		West Branch	At mouth	*965
			Just upstream of U.S. Highway 169 Bypass	*970
			About 0.5 mile upstream of U.S. Highway 169 Bypass	*972
Maps available for inspection at the Office of the City Clerk, City Hall, 206 South Fifth Avenue, Princeton, Minnesota 55371.				
Missouri	(C), De Soto, Jefferson County (Docket No. FEMA 5884).	Joachim Creek	About 2,850 feet downstream of Missouri-Pacific Railroad	*472
			About 150 feet upstream of Kelly Street	*502
			About 150 feet downstream of State Highway E	*519
			About 150 feet upstream of State Highway E	*524
			About 550 feet upstream of State Highway E	*525
		Ball Creek	Confluence with Joachim Creek	*476
			About 80 feet upstream of State Highway 110	*480
			About 820 feet upstream of State Highway 110	*483
		County Road Tributary	Confluence with Joachim Creek	*483
			Just downstream of Second Street	*490
			About 2,200 feet upstream of Fifth Street	*533
		East Tributary	Confluence with Joachim Creek	*498
			About 350 feet upstream of Flucom Road	*528
		Tanyard Branch	Confluence with Joachim Creek	*505
			About 600 feet upstream of Elm Street	*538
Maps available for inspection at the City Hall, 413 South Second Street, De Soto, Missouri 63020.				
Missouri	City of Hayti Heights, Pemiscot County (FEMA-5798).	Lateral No. 21	Just downstream of Braggadocia Road	*267
			Just upstream of Braggadocia Road	*268
		Shallow Flooding	Northeast of the intersection of and County Road	*268
Maps available for inspection at City Hall, Rappaport Street, Hayti Heights, Missouri 63851.				
Missouri	(C), Novinger, Adair County (Docket No. FEMA-5895).	Davis Branch	About 1,100 feet downstream of Second Street	*762
			Just downstream of Second Street	*765
			About 2,800 feet upstream of Missouri Avenue	*779
Maps available for inspection at the City Hall, P.O. Box 277, Novinger, Missouri 63559.				
Missouri	(C), Sullivan, Franklin and Crawford Counties (Docket No. FEMA-5895).	Winsel Creek	About 1,200 feet downstream of County Highway AF	*904
			Just downstream of County Highway AF	*907
			Just downstream of Elmont Road	*939
			Just upstream of Elmont Road	*944
Maps available for inspection at the City Hall, 210 Washington Avenue, Sullivan, Missouri 63080.				
New Jersey	Fieldsboro (Borough), Burlington County (Docket No. FEMA-5853).	Delaware River	Upstream Corporate Limits	*13
			Downstream Corporate Limits	*13
Maps available for inspection at the Borough Clerk's Office, Borough Hall, No. 5, 4th Street, Fieldsboro, New Jersey.				
New York	Addison (Village), Steuben County (FEMA-5875).	Canisteo River	100 feet upstream from center of Main Street	*992
		Tuscarora Creek	100 feet upstream from center of South Street	*992
Maps available for inspection at Village Hall, 35 Tuscarora Street, Addison, New York.				

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Camillus (Town), Onondaga County (FEMA-5875).	Ninemile Creek	Upstream side of Airport Road over the channel	*386
			Meadow Lane	*403
			The southernmost intersection of Martisco Road and State Highway 174.	*459
		Geddes Brook	Horan Road over the channel	*419
			Approximately 200 feet east along Myron Road from its intersection with Jones Street.	*432
			Intersection of Inwood Drive and Shineview Drive	*479
		Unnamed Stream near Garden Terrace.	Intersection of Conrail and the channel	*386
			Upstream side of Pottery Road over the channel	*387
		Unnamed Stream East	Upstream side of State Highway 5 and 20 over the channel	*469
	Maps available for inspection at Town Hall, Camillus, New York.			
New York	Dresden (Village), Yates County (Docket No. FEMA-5875).	Keuka Lake Outlet	Confluence with Seneca Lake	*449
			Charles Street	*456
			Conrail (Downstream)	*459
			Conrail (Upstream)	*473
			State Route 14	*473
	Maps available for inspection at the Dresden Village Clerk's Office, 58 Milo Street, Dresden, New York.			
New York	Penn Yan (Village), Yates County (Docket No. FEMA-5853).	Keuka Lake	Entire Shoreline within Village	*721
		Keuka Lake Outlet	Corporate Limits	*695
			420' downstream of Cherry Street	*705
			520' upstream of Conrail	*715
			Confluence with Keuka Lake	*721
		Sucker Brook	Confluence with Keuka Lake	*721
			450' downstream of State Route 54A	*731
			400' upstream of State Route 54A	*741
			1,000' upstream of State Route 54A	*750
			Upstream Court Street	*760
			80' downstream of School Drive	*769
			450' upstream of School Drive	*780
			930' upstream of School Drive	*789
			20' downstream of Maple Street	*795
			20' upstream of Maple Street	*799
			430' upstream Maple Street	*809
			740' upstream of Maple Street	*819
			190' downstream Corporate Limits	*829
			Corporate Limits	*840
		Kimbell Gully	Confluence with Keuka Lake	*721
			140' upstream of Wadell Avenue	*731
			190' upstream of State Route 54	*741
			Upstream South Avenue	*746
			600' upstream of South Avenue	*763
		Jacobs Brook	Jacobs Brook Culvert Inlet	*725
			40' upstream of State Route 54	*735
			1,020' upstream of State Route 54	*745
			350' downstream of North Avenue	*755
			110' upstream of North Avenue	*765
			630' downstream Corporate Limits	*775
			Corporate Limits	*779
	Maps available for inspection at the Penn Yan Village Clerk's Office, Maiden Lane, Penn Yan, New York.			
New York	Riga (Town), Monroe County (Docket No. FEMA-5895).	Black Creek	Downstream Corporate Limits	*544
			Upstream Burnt Mill Road	*555
			Upstream Interstate Highway 490 (upstream crossing)	*560
			Upstream Bangs Road	*571
			Upstream Corporate Limits	*573
	Maps available for inspection at the Riga Town Hall, 8 South Main Street, Churchville, New York.			
New York	Wellsburg (Village), Chemung County (Docket No. FEMA-5875).	Chemung River	Upstream State Route 367	*824
			Upstream Corporate Limits	*828
		Bentley Creek	Upstream Conrail	*828
			Upstream State Route 427	*829
			Upstream Main Street	*856
			Upstream State Boundary	*871
	Maps available for inspection at the Village Clerk's residence, 207 Main Street, Wellsburg, New York.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2290 Filed 1-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Ohio, et al.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii Call Toll Free (800) 424–9080, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Ohio	(V), Bratenahl, Cuyahoga County (Docket No. FEMA-5895).	Lake Erie	Shoreline	*576 Q03
Maps available for inspection at the Office of the Village Clerk, Bratenahl Village Hall, 411 Bratenahl Road, Cleveland, Ohio 44108.				
Ohio	(V), Brooklyn Heights, Cuyahoga County (Docket No. FEMA-5895).	Cuyahoga River	Downstream corporate limit	*596
			Upstream corporate limit	*598
Ohio	(V), Cuyahoga Heights, Cuyahoga County (Docket No. FEMA-5895).	Cuyahoga River	About 130 feet downstream of the Harvard Denison Viaduct	*589
			Just upstream of the Harvard Denison Viaduct	*590
			About 2,800 feet upstream of Harvard Avenue	*591
			Just downstream of State Route 21	*600
			About 120 feet upstream of confluence of Mill Creek	*602
Maps available for inspection at the Office of the Village Clerk, Cuyahoga Heights Village Hall, 4863 East 71st Street, Cleveland, Ohio 44125.				
Ohio	(C), Miamisburg, Montgomery County (Docket No. FEMA-5895).	Great Miami River	About 1.0 mile downstream of Linden Avenue	*700
			About 1.1 miles upstream of Sycamore Street	*706
		Sycamore Creek	Confluence with Great Miami River	*704
			About 400 feet downstream of 9th Street	*705
			Just downstream of 12th Street	*740
		Sycamore Creek Tributary	Just downstream of Kercher Street	*721
			Just upstream of Kercher Street	*730
			Just downstream of Richard Street	*747
Maps available for inspection at the City Hall, 10 North First Street, Miamisburg, Ohio 45342.				
Ohio	(C), Shaker Heights, Cuyahoga County (Docket No. FEMA-5895).	Doan Brook	About 100 feet downstream corporate limits	*833
			About 150 feet upstream of Farihill Road	*888
			Just upstream of the footbridge located 230 feet upstream of Coventry Road.	*897
			About 550 feet upstream of Coventry Road	*907
			Just downstream of North Woodland Road	*909
			About 200 feet upstream of North Woodland Road	*916
			About 150 feet upstream of Shaker Boulevard	*923
			Just downstream of South Woodland Road	*932
			Just upstream of South Woodland Road	*937
			About 500 feet upstream of Parkland Drive	*943
			Just upstream of dam located 660 feet upstream of Parkland Drive	*954
			Just upstream Lee Road	*963
			Just upstream Andover Road	*973
			About 1,100 feet upstream of Attleboro Road	*977
			About 200 feet upstream of Torrington Road	*995
			About 4,400 feet upstream of Torrington Road	*1,022
Maps available for inspection at the Office of the City Clerk, City Hall, 3400 Lee Road, Shaker Heights, Ohio 44128.				
Oklahoma	City of Sand Springs, Tulsa and Osage Counties (FEMA-5924).	Arkansas River	Just downstream of State Highway 97	*648
		Fisher Creek	Just downstream of 137th West Avenue	*666
		Anderson Creek	Just downstream of the corporate limits	*657
		Prattville Creek	Just downstream of West 41st Street Bridge	*688
			Just downstream of New State Highway 97 Bridge	*714
		Arkansas River Tributary	Just upstream of 4th Street	*675

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Just upstream of Industrial Avenue	*701
Maps available for inspection at City Hall, Broadway and Mckinley Streets, Sand Springs, Oklahoma 74063.				
Pennsylvania	Bethel Park, Municipality, Alleghency County (Docket No. FEMA-5883).	Graesers Run	Downstream Corporate Limits	*998
			Brookside Boulevard (upstream)	*1,010
			Approximately 1,200' upstream of Brookside Boulevard	*1,020
		Finey Fork	Downstream Corporate Limits	*982
			Upstream Library Road	*987
			Upstream of First Footbridge	*1,004
			Upstream of6th Footbridge	*1,013
			Upstream of Irishtown Road	*1,035
			Approximately 500' upstream of Irishtown Road	*1,039
		Tributary 1 to Piney Fork	Confluence with Piney Fork	*983
			Upstream Library Road	*991
			Upstream Allegheny County Port Authority Right-of-way	*994
			Upstream Beagle Drive	*1,007
			Upstream West Kings School Road	*1,031
			Approximately 900' upstream of West Kings School Road	*1,039
Maps available for inspection at the Bethal Park Library, Bethel Park, Pennsylvania.				
Pennsylvania	Brecknock, Township, Berks County (Docket No. FEMA-5815).	Muddy Creek	Downstream Corporate Limits	*497
			Approximately 1,500' downstream of Maple Grove Road	*502
			Upstream side of Maple Grove Road	
			Culvert outlet of Maple Grove Drag Strip	*514
			Culvert inlet of Maple Grove Drag Strip	*520
			Approximately 2,800' upstream of Maple Grove Drag Strip	*524
			Approximately 3,600' upstream of Maple Grove Drag Strip	*528
		Allegheny Creek	Approximately 1,200' downstream of Subdivision Road	*481
			Approximately 800' downstream of Subdivision Road	*487
			Approximately 250' downstream of Subdivision Road	*493
			Culvert inlet of Subdivision Road	*502
			Approximately 800' upstream of Subdivision Road	*508
			Culvert outlet at Kurtz Mill Road	*520
			Culvert inlet of Township Parking Lot	*526
			Approximately 500' upstream of Township Parking Lot Culvert inlet	*531
		Tributary No. 2	Upstream of Store Road	*398
			Approximately 600' upstream of Store Road	*405
			Approximately 1,000' upstream of Store Road	*411
			Approximately 1,400' upstream of Store Road	*419
			Approximately 1,600' upstream of Store Road	*425
			Approximately 2,200' upstream of Store Road	*429
		Tributary No. 3	Approximately 300' downstream of Kramer Road	*480
			Upstream of Kramer Road	*488
			Approximately 400' upstream of Kramer Road	*493
			Approximately 900' upstream of Kramer Road	*500
			Approximately 1,100' upstream of Kramer Road	*506
			Culvert outlet of Private Lane, approximately 1,230' upstream of Kramer Road.	*512
			Culvert inlet of Private Lane, approximately 1,300' upstream of Kramer Road.	*517
			Approximately 1,500' upstream of Kramer Road	*525
			Approximately 2,050' upstream of Kramer Road	*541
			Approximately 2,500' upstream of Kramer Road	*557
			Approximately 3,000' upstream of Kramer Road	*574
			Approximately 3,200' upstream of Kramer Road	*585
			Culvert inlet of Private Lane, approximately 3,250' upstream of Kramer Road.	*590
			Approximately 3,500' upstream of Kramer Road	*601
Maps available for inspection at the Brecknock Municipal Building, Brecknock, Pennsylvania.				
Pennsylvania	California, Borough, Washington County (Docket No. FEMA-5886).	Monongahela River	Downstream Corporate Limits	*766
			Approximately 1.0 mile upstream of downstream Corporate Limits	*767
			Upstream Corporate Limits	*770
Maps available for inspection at the Borough Building, 333 Third Street, California, Pennsylvania.				
Pennsylvania	Center, Township, Beaver County (Docket No. FEMA-5895).	Ohio River	Downstream Corporate Limits	*702
			Approximately 4,800 feet upstream of downstream corporate limits	*703
			Confluence of Elkhorn Run	*706
			Upstream Corporate Limits	*706
		Raccoon Creek	Upstream side Beaver Valley Expressway	*760
			Upstream Corporate Limits	*767
		Elkhorn Run	Confluence with Ohio River	*706
			Downstream side Tank Road	*706
			Upstream side Private Drive (approximately 1,785 feet upstream of Tank Road).	*733
			Approximately 30 feet downstream confluence of Moon Run	*750
			Approximately 40 feet upstream of 1st crossing of Vankirk Road	*840
			Upstream of 2nd crossing of Vankirk Road	*852
			Vankirk Road (extended)	*871
			Approximately 1,320 feet downstream of Legislative Route 04074	*893
			Upstream Legislative Route 04074	*910

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Upstream 1st crossing of Elkhorn Road	*927
			Upstream 2nd crossing of Elkhorn Road	*945
			Confluence of Shafers Run	*960
			Upstream Temple Road	*977
			Approximately 240' upstream Chapel Road	*1,005
		Tributary A	Confluence with Elkhorn Run	*985
			Upstream Private Drive	*1,010
			Approximately 190' upstream Temple Road	*1,054
		Shafers Run	Confluence with Elkhorn Run	*960
			Upstream side Private Drive	*997
			Confluence of Tributary B	*1,017
			Approximately 400' downstream of State Route 51	*1,031
		Tributary B	Confluence with Shafers Run	*1,017
			Approximately 785' upstream of confluence with Shafers Run	*1,038
		Tributary C	Confluence with Shafers Run	*1,015
			Approximately 970' upstream of confluence with Shafers Run	*1,040
			Approximately 130' upstream Woodland Drive	*1,069
		North Branch Moon Run	Approximately 815' downstream of Private Drive	*883
			Upstream of Private Drive	*899
			Upstream of Chapel Road	*945
			Approximately 1,600' upstream of Chapel Road	*974
		South Branch Moon Run	Approximately 535' downstream of Chapel Road	*1,003
			Approximately 800' upstream of Chapel Road	*1,013
			Downstream of Private Road	*1,051
			Upstream of Popular Avenue	*1,066
			Approximately 1,075' upstream of Popular Avenue	*1,083
		Tributary D	Confluence with South Branch Moon Run	*1,043
			Downstream of Popular Avenue	*1,062
			Upstream of Private Drive	*1,075
			Approximately 1,020'upstream of Private Drive	*1,101
		Logtown Run	Confluence with Tributary E	*969
			Upstream of Academy Drive	*1,026
			Approximately 1,425' upstream of Academy Drive	*1,051
			Approximately .56 mile upstream of Academy Drive	*1,102
		Tributary E	Confluence with Logtown Run	*969
			Downstream of 1st Private Drive	*988
			Upstream of 1st Private Drive	*1,011
			Downstream of 2nd Private Drive	*1,018
			Upstream of 2nd Private Drive	*1,037
			Approximately 400' upstream of 2nd Private Drive	*1,040
Maps available for inspection at the Center Township Building, Aliquippa, Pennsylvania.				
Pennsylvania	Centerville, Borough, Washington County (Docket No. FEMA-5886).	Monongahela River	Downstream Corporate Limits	*771
			Confluence with Two Mile Run	773
			Upstream side of Maxwell Lock and Dam	776
			Upstream Corporate Limits	777
			Approximately 2,006' upstream of upstream Corporate Limits	778
Maps available for inspection at the Centerville Borough Building.				
Pennsylvania	Colebrook, Township, Clinton County (Docket No. FI-5227).	West Branch Susquehanna River.	Downstream Corporate Limits	*578
			Upstream Corporate Limits	*594
		Lick Run	At confluence with West Branch Susquehanna River	*583
			320' downstream from Legislative Route 18011 Bridge to Hazard Road.	*647
		Whiskey Run	At confluence with Lick Run (Upstream side)	*584
			Legislative Route 18011 Bridge	*594
			Approximately 1,200' upstream of Legislative Route 18011	*643
Maps available for inspection at the residence of Ms. Pauline Simcox, Farrandsville, Pennsylvania.				
Pennsylvania	Dupont, Borough, Luzerne County (Docket No. FEMA-5873).	Mill Creek	Downstream Corporate Limits	*712
			Upstream Center Street	*720
			Downstream Main Street	*728
			Upstream Main Street	*733
			Upstream Chestnut Street	*749
			Upstream Bear Creek Road	*752
			Approximately 1,465' upstream of Bear Creek Road	*800
		Collins Creek	Downstream Chestnut Street	*742
			Downstream Walnut Street	*753
			Upstream Walnut Street	*757
			Upstream Ash Street	*774
			Downstream I-81	*799
			Upstream I-81	*826
			Downstream Pennsylvania Turnpike (Northeast Extension)	*836
			Upstream Pennsylvania Turnpike (Northeast Extension)	*853
			Approximately 320' upstream of Pennsylvania Turnpike	*866
		Liddy Creek	Confluence of Mill Creek	*713
			Downstream Main Street	*731
			Downstream State Route 315	*734
			Upstream Walnut Street	*749
			Upstream Private Road	*820
			Downstream Pennsylvania Turnpike (Northeast Extension)	*838
Maps available for inspection at the Municipal Building, 600 Chestnut Street, Dupont, Pennsylvania.				

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Pennsylvania	Economy, Borough, Beaver County (Docket No. FEMA-5886).	Ohio River	Downstream Corporate Limits	*706
			Upstream Corporate Limits	*707
		Big Sewickley Creek	Downstream Corporate Limits	*727
			Downstream Merriman Road	*741
			Downstream Big Sewickley Creek Road	*756
			Upstream side 4th Private Drive	*784
			Downstream side Big Sewickley Creek Road	*789
			Confluence of Tributary A	*804
			Upstream side Private Drive	*821
			Upstream Big Sewickley Creek Road	*832
			Upstream Corporate Limits	*858
		Tributary A	Upstream side of Cooney Hollow Road	*809
			Approximately 0.31 mile upstream of confluence with Big Sewickley Creek.	*853
		Tributary B	Confluence with Big Sewickley Creek	*741
			Upstream side 3rd Private Drive, approximately 600' above confluence with Big Sewickley Creek.	*758
			Upstream side 4th Private Drive, approximately 1,050' above confluence with Big Sewickley Creek.	*777
			Approximately 0.21 mile upstream of 4th Private Drive	*828
			Approximately 0.33 mile upstream of 4th Private Drive	*878
			Approximately 0.45 mile upstream of 4th Private Drive	*922
		North Fork Big Sewickley Creek	Confluence with Big Sewickley Creek	*790
			Upstream side 1st Private Drive	*819
			Downstream side of 2nd Private Drive	*835
			Confluence of Tributary C	*851
			Upstream of Private Drive	*860
			Approximately 0.74 mile upstream of Private Drive	*883
			Approximately 3.29 miles upstream of confluence with Big Sewickley Creek.	*916
		Tributary C	Confluence with North Fork Big Sewickley Creek	*851
			Approximately 140' downstream of Hoeing Road	*856
			Approximately 760' upstream of Hoeing Road	*886
		South Branch Legionville Run	Downstream Corporate Limits	*844
			Downstream side Millsdale	*860
			Downstream Private Drive	*883
			Upstream side Hemmerle Road	*952
			Approximately 350' upstream Hemmerle Road	*957
		Tributary D	Confluence with South Branch Legionville Run	*861
			Approximately 600' upstream of confluence with South Branch Legionville Run.	*871
Maps available for inspection at the Economy Borough Hall, Baden, Pennsylvania.				
Pennsylvania	Edinboro, Borough, Erie Co. (Docket No. FEMA-5873).	Conneauttee Creek	Upstream of Kinter Hill Road	*1,185
			Upstream of Normal Street	*1,1200
			Upstream of Chestnut Street	*1,203
			Upstream Corporate Limits	*1,204
		Tributary A	Downstream Corporate Limits(First Crossing)	*1,206
			Upstream Corporate Limits (First Crossing)	*1,212
			Upstream Corporate Limits (Second Crossing)	*1,219
Maps available for inspection at the Municipal Building, 124 Meadville Street, Edinboro, Pennsylvania.				
Pennsylvania	Frankstown, Township, Blair County (Docket No. FEMA-5724).	Frankstown Branch Juniata River	11,700' downstream Township Route 444	*877
			Township Route 444 (Downstream side)	*888
			300' upstream of Conrail	*893
			White Bridge Road (Upstream side)	*916
			Legislative Route 07011 (Upstream side)	*922
			Township Route 405	*927
			Legislative Routre 07012 (Upstream side)	*932
		Beaverdam Branch	Confluence with Frankstown Branch of Juniata River	*927
			Confluence with Brush Run	*931
		Canoe Creek	U.S. Route 22	*890
			Confluence of New Creek	*891
		New Creek	Private Drive (Upstream side)	*897
			Legislative Route 07021 (Upstream side)	*902
			1,540' upstream Legislative Route 07021	*907
			4,560' upstream Legislative Route 07021	*923
			1.3 miles upstream Legislative Route 07021	*937
			1.9 miles upstream Legislative Route 07021	*967
		Brush Creek	U.S. Route 22	*921
			Private Drive (Upstream U.S. Route 22	*932
			Legislative Route 07011 (Upstream side)	*960
			Township Route 424	*966
			Legislative Route 07011 (0.2 mile upstream Route 424) Upstream side.	*1,003
			Legislative Route 07011 (0.99 mile upstream Route 424) Upstream side.	*1,165
			1,080' upstream of Private Drive	*1,252
		Oldtown Run	Legislative Route 07011	*927
			Township Route 378 (1.4 miles upstream Legislative Route 07011)	*949
			Township Route 378 (2nd crossing)	*989
			Township Route 376 (1st crossing)	*1,032

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Private Drive, approximately 1,170' upstream Township Route 376	*1,123
			1,300' upstream Private Drive	*1,150
		Brush Run	Confluence with Beaverdam Branch	*931
			U.S. Route 22	*936
			Upstream side of Scotch Valley Road/Township Route 424	*943
			Legislative Route 07015 (Upstream side)	*953
			U.S. Route 220 (Upstream side)	*955
			Upstream Corporate Limits	*961
Maps available for inspection at the Township Municipal Building.				
Pennsylvania	Heidelberg, Borough, Allegheny County (Docket No. FEMA-5873).	Chartiers Creek	Downstream Corporate Limits	*780
			Walnut Street (Extended)	*782
			Upstream of State Route 50	*783
			Upstream of 2nd Street (Extended)	*784
			Third Street (Extended)	*785
			Fourth Street (Extended)	*786
			Upstream Corporate Limits	*787
Maps available for inspection at the Office of the Tax Collector, 1642 Walnut Street, Heidelberg, Pennsylvania.				
Pennsylvania	Lehigh, Township, Lackawanna County (Docket No. FEMA-5883).	Lehigh River	Downstream Corporate Limits	*1,511
			Locust Road about 0.56 mile upstream of Locust Ridge Road (Upstream side).	*1,538 *1,538
			Confluence of Pond Creek about 1.5 miles upstream of Locust Ridge Road.	*1,554
			Confluence of Buckly Run about 425 feet upstream of Pine Grove Road Extended.	*1,560
			Confluence of Spuce Run	
			Upstream Corporate Limits	*1,570
Maps available for inspection at the Lehigh Municipal Building, Thornhurst Community Center, Thornhurst, Pennsylvania.				
Pennsylvania	Middlesex, Township, Cumberland County (Docket No. FEMA-5924).	Conodoguinet Creek	Downstream Corporate Limits	*393
			Approximately 9,550' downstream of North Middlesex Limits	*403
				*411
		Letort Springs Run	Confluence with Conodoguinet Creek	*407
			Upstream of U.S. Route 11	*421
			Upstream of Shady Shady Lane	*429
			Upstream Corporate Limits	*435
Maps available for inspection at the Middlesex Township Building, 350 North Middlesex Road, Carlisle, Pennsylvania.				
Pennsylvania	Penn Hills, Municipality Allegheny County (Docket No. FEMA-5853).	Allegheny River	Downstream Corporate Limits	*739
			Confluence of Sandy Creek	*741
			upstream Corporate Limits	*741
		Plum Creek	Downstream Corporate Limits	*750
			Hulton Road (Upstream)	*831
			Conrail Bridge (Downstream of Steumagle Lane)	*856
			Milltown Road (Approximately 80 feet upstream)	*865
			Private Drive Upstream	*882
			Mary Street Upstream	*897
			Leechburg Road Upstream	*908
			Universal Road (Corporate Limits)	*918
		Sandy Creek	Confluence with Allegheny River	*741
			Private Road Bridge (Approximately 50 feet upstream)	*762
			Bon-Air Products Building (Upstream)	*773
			Private Drive (Upstream)	*801
			Sandy Creek Road (Upstream)	*813
			Approximately 1,800 feet upstream of Verona Road	*855
Maps available for inspection at the Department of Planning and Economic Development, Penn Hills Municipal Office.				
Pennsylvania	Pittston, Township, Luzerne County (Docket No. FEMA-5873).	Mill Creek	Upstream Pennsylvania Turnpike (N.E. Extension)	*869
			Upstream Private Road	*876
			Upstream Dam	*890
			Approximately 2,200' upstream of Dam	*940
			Approximately 4,500' upstream of Dam	*1,024
		Collins Creek	Downstream Corporate Limits	*866
			Downstream Private Road	*910
			Upstream Private Road	*916
			Upstream Corporate Limits	*929
Maps available for inspection at the Municipal Building, 421 Broad Street, Pittston, Pennsylvania.				
Pennsylvania	Reading, Township, Adams County (Docket No. FEMA-5893).	West Conewago Creek	Downstream Corporate Limits	*400
			Upstream State Route 194	*403
			Upstream State Route 234	*410
			Upstream Legislative Route 01037	*421
			Upstream Green Ridge Road	*433

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Upstream Dam	*445
			Upstream Legislative Route	*453
			Approximately 6,450 upstream of Legislative Route 01203	*456
Maps available for inspection at the Reading Municipal Building, R. D. 2, East Berlin, Pennsylvania.				
Pennsylvania	Richland, Township, Bucks County (Docket No. FEMA-5895).	Beaver Run	Confluence with Licking Creek	*489
			Upstream Conrail	*493
			Upstream South Old Bethlehem Pike	*497
			Upstream State Route 309	*500
			Upstream Trumbaversville Road	*504
		Licking Run	Approximately 1,900' upstream of confluence with Tohickon Creek	*486
			Downstream Erie Road	*491
			Upstream Corporate Limits	*493
		Morgan Creek	Confluence with Tohickon Creek	*485
			Upstream State Route 313	*486
			Upstream Conrail	*492
			Upstream South Old Bethlehem Pike	*496
			Upstream State Route 309	*498
			Upstream Scholl's School Road	*502
			Upstream Corporate Limits	*509
		Tohickon Creek	Approximately 3,200' downstream of Erie Road	*485
			Upstream State Route 212	*490
			Approximately 4,000' upstream of State Route 212	*493
Maps available at the Richland Municipal Building, 1328 California Road, Quakerstown, Pennsylvania				
Pennsylvania	Rochester, Township, Beaver County (Docket No. FEMA-5883).	Beaver River	Downstream Corporate Limits	*704
			Upstream Corporate Limits	*705
		Lacock Run	East Washington Street Bridge	*798
			Approximately 520' upstream of East Washington Street Bridge	*814
			Upstream side of Adams Street Bridge (downstream crossing)	*830
			Approximately 500' upstream of Adams Street Bridge	*849
			Upstream side of Adams Street Culvert	*868
			Approximately 500' upstream of Adams Street Culvert	*885
			Upstream side of Reno Street Bridge	*910
			Upstream side of Private Drive	*937
			Bridge approximately 550' upstream of Reno Street Bridge	*937
			Upstream of Private Drive Bridge approximately 850' upstream of Reno Street Bridge.	*949
			Approximately 1,400' upstream of Reno Street Bridge	*977
			Approximately 1,700' upstream of Reno Street Bridge	*996
			Approximately 75 feet upstream of Private Drive Culvert located approximately 1,850' upstream of Reno Street Bridge.	*1,020
Maps available for inspection at the Township Building, Rochester, Pennsylvania.				
Pennsylvania	West Manchester, Township, York County (Docket No. FEMA-5785).	Codorus Creek	Upstream Corporate Limits	*385
			Indian Rock Dam Road (upstream)	*382
			Downstream Corporate Limits	*370
		Little Conewago Creek	Upstream Corporate Limits	*398
			Carlisle Pike (Upstream)	*383
			Poplars Road (Upstream)	*380
			Bull Road at Downstream Corporate Limits (Upstream)	*374
		Shiloh Tributary to Little Conewago Creek.	Approximately 1,000' feet upstream from Loman Drive extended	*427
			Private Drive 1,600 feet upstream form Sunset Lane (Upstream)	*420
			Private Drive 1,160 feet upstream from Sunset Lane (Upstream)	*413
			Sunset Lane (Upstream)	*401
			Thornbridge Road East (Upstream)	*391
			Confluence with Little Conewago Creek	*386
		Honey Run	Approximately 2,400 feet upstream of Taxville Road	*420
			Taxville Road (Upstream)	*405
			Private Road 800 feet downstream from Taxville Road (Upstream)	*403
			Confluence with Little Conewago Creek	*398
Maps available for inspection at the West Manchester Township Building.				
Pennsylvania	White Haven, Borough, Luzerne County (Docket No. FEMA-5832).	Lehigh River	Downstream Corporate Limits	*1,080
			Downstream Interstate 80	*1,089
			Upstream State Route 940	*1,098
			Upstream Corporate Limits	*1,102
Maps available at the Borough Municipal Building, 312 Main Street, White Haven.				
South Carolina	City of Hanahan, Berkeley County (FEMA-5895).	Atlantic Ocean	Along Goose Creek just upstream of North Rhett Avenue	*11
			Along Turkey Creek just upstream of Murray Avenue	*11
			Along Unnamed Tributary to Goose Creek, just downstream of Yeamans Hall Road.	*11
Maps available for inspection at City Hall, 1255 Yeamans Hall Road, Hanahan, South Carolina 29410.				

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
South Carolina	Lexington County, unincorporated areas (FEMA-5765).	Congaree River	At center of Gervais Street	*157
		Congaree Creek	100 feet upstream from center of Interstate Highway 26	*143
			At center of U.S. Highway 1 (Augusta Road)	*245
			30 feet upstream from center of Woodberry Road	*269
		Tributary SM-3	200 feet upstream from center of Interstate Highway 26	*171
		First Creek	At center of Dogwood Road	*174
		Saluda River	At center of Interstate Highway 26	*180
			At center of Interstate Highway 20	*188
		Senn Branch	30 feet upstream from center of McSwain Drive	*185
			At center of Ephrata Delve	*232
		Stoop Creek	At center of State Highway 273 (Bush River Road)	*185
			At center of Tree Top Lane	*199
		Kinley Creek	At center of Shareditch Road	*192
			100 feet east along Lockner Road from its intersection with Challedon Drive.	*212
		Tributary K-2	200 feet north along Pittsdowne Road from its intersection with Nottingham Road.	*275
		Twelve Mile Creek	50 feet upstream from center of East Main Street (U.S. Highway 1)	*200
		Rawls Creek	At center of Goldstone Drive	*217
			25 feet upstream from center of Ripley Station Road	*216
		Koon Branch	At center of Woodvalley Drive	*262
			200 feet east along Water Hill Drive from its intersection with South Woodside Road.	
Maps available for inspection at County Administration Building, 212 S. Lake Drive, Lexington, South Carolina.				
South Carolina	Town of Summerville, Dorchester County (FEMA-5895).	Sawmill Branch	Just upstream of Newington Boulevard	*31
			Just upstream of State Highway 165	*39
			Just upstream of Richardson Avenue	*48
Maps available for inspection at Town Engineer's Office, Town Hall, 104 Civic Center, Summerville, South Carolina 29483.				
Tennessee	Town of Arlington, Shelby County (FEMA-5924).	Losahatchie River	Just upstream of Collierville-Arlington Road	*269
			Just downstream of U.S. Highway 70	*273
		Cypress Creek	Just downstream of Memphis-Arlington Road	*267
			Just downstream of Interstate Highway	*273
		Hall Creek	Just upstream of Old Airline Road	*286
		Lateral A	Just upstream of Gulfstream Road	*270
			Just downstream of Memphis-Arlington Road	*280
		Lateral C	Just downstream of the Louisville and Nashville Railroad	*272
			Just downstream of Forest Street	*287
		Lateral CA	Just downstream of Forrest Street	*282
Maps available for inspection at City Clerk's Office, 6235 Chester Street, Arlington, Tennessee 38002.				
Tennessee	City of Bartlett, Shelby County (FEMA-5813).	Harrington Creek	Approximately 800 feet upstream of corporate limits	*252
			Just upstream of Bartlett Road	*258
			Just downstream of Louisville and Nashville Railroad	*261
			Just upstream of North Street	*270
		Lateral A	Approximately 250 feet upstream of Louisville and Nashville Railroad	*252
			Just downstream of Stage Road	*264
			Just downstream of Woodlawn Street	*269
		Lateral B	Just downstream of Alfaree	*258
			Just upstream of Stage Road	*266
			Just downstream of Lynchburg Road	*271
		Lateral C	Just upstream of culvert on upstream side of Bartlett Boulevard	*257
			Just upstream of Kenwood Drive extended	*263
			Just downstream of Hawthorne Road	*280
		Lateral D	Just upstream of Elmore Park Road	*273
		Lateral E	Just upstream of culvert under Bartlett Boulevard	*270
Maps available for inspection at City Hall, 5727 Woodlawn Street, Bartlett, Tennessee 38134.				
Tennessee	Unincorporated areas of Dyer County (FEMA-5924).	North Fork Forked Deer River	Southern Planning limits for the City of Dyersburg	*276
		Lewis Creek Drainage Ditch	At State Highway 104	*283
		Jones Creek	Just downstream of Phillips Street	*284
		Light Creek	Just upstream of Illinois Central Gulf Railroad	*289
		Hurricane Creek	Just upstream of U.S. Highway 51	*294
Maps available for inspection at Dyer County Courthouse, Court Square, Dyersburg, Tennessee 38024.				
Tennessee	Goodlettsville (City) Davidson and Summer Counties (FEMA-5873).	Dry Creek	Inspection of Janette Avenue and Melissa Drive	*450
			Intersection of creek and center of Dickerson Pike (U.S. Highway 31 west, 41 and State Highway 11).	*496

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
		Mansker Creek	Intersection of creek and center of Interstate Highway 65	*444
		Goodlettsville	Intersection of ditch and center of Louisville and Nashville Railroad	*#1
			100 feet upstream from center of Two Mile Pike	*461
		Slaters Creek	Intersection of Interstate Highway 65 and U.S. Highway 31W	*465
		Lumsley Fork	Intersection of Hitt Lane and Utley Drive	*466
	Maps available for inspection at 117 Memorial Drive, Goodlettsville, Tennessee.			
Tennessee	Town of Rossville, Fayette County (FEMA-5893).	Wolf River	Just upstream of Western Corporate Limits	*312
	Maps available for inspection at City Hall, 80 Third Street, Rossville, Tennessee 38066.			
Texas	Unincorporated Areas of Atascosa County (FEMA-5893).	Atascosa River	At the City of Pleasanton East Corporate Limits	*350
			Approximately 1000 feet downstream of the confluence of Bonita Creek and at the corporate limits of Pleasanton.	*353
			Just upstream of the City of Pleasanton North Corporate limits	*363
		Bonita Creek	Approximately 700 feet upstream of Bryant Street	*360
			Approximatley 650 feet downstream of the upstream corporate limits of Pleasanton.	*363
	Maps available for inspection at County Judge's Office, County Courthouse, Circle 41 Drive, Jourdanton, Texas 78064.			
Texas	City of Beevillve, Bee County (FEMA-5893).	Poesta Creek	Just upstream of U.S. Business Highway 181 (Washington Street)	*208
			Just downstream of FM 673 (Hugoscta Street)	*216
		Hesley Creek	Just upstream of St. Mary's Street	*205
			Just upstream of Southern Pacific Railroad	*209
		Salt Creek	Just downstream of U.S. Business Highway (Northeast Washington Street).	*254
	Maps available for inspection at City Hall, 100 West Corpus Christi Street, Beeville, Texas 78102.			
Texas	City of Converse, Bexar County (FEMA-5841).	West Salitrillo Creek	Just downstream of Seguin Road	*652
			Just downstream of Southern Pacific Railroad	*696
		East Salitrillo Creek	Just downstream of Farm Market Road 78	*679
			Just upstream of Southern Pacific Railroad	*692
	Maps available for inspection at City Hall, 204 South Seguin Road, P.O. Box 36, Converse, Texas 78109.			
Texas	City of Hempstead, Walker County (FEMA-5924).	Blasingame Creek	Just upstream of Washington Street	*209
			Just downstream of Southern Pacific Railroad	*225
	Maps available for inspection at City Hall, 1125 Austin Street, Hempstead, Texas 77445.			
Texas	City of McAllen, Hidalgo County (FEMA-5924).	Ponding Area 1	Adjacent to Boeye Reservoir	*102
		Ponding Area 2	In natural depression at U.S. Highway 83 just west of Bentsen Road	*105
		Ponding Area 3	South of Mission Inlet's South Levee just west of FM 1926	*99
		Ponding Area 4	South of Mission Inlet's South Levee between South 10th Street and Pharr-San Juan Main Canal.	*95
	Maps available for inspection at Engineering Department, City Hall, 311 North 5th Street, McAllen, Texas 78501.			
Virginia	Giles County (Docket No. FI-4990).	New River	Approximately 3.3 miles downstream of confluence of Stony Creek	*1,576
			State Route 623	*1,630
			State Route 730	*1,654
			Approximately 1.25 miles upstream of State Route 730	*1,659
		Wolf Creek	Corporate Limits, Town of Narrows	*1,555
			State Route 671 (Extended)	*1,577
			Upstream of State Route 675	*1,680
			Upstream of State Route 724	*1,713
			Upstream of Private Bridge	*1,837
			Upstream County Boundary	*1,864
		Sinking Creek	Approximately 750' downstream of U.S. Highway 460	*1,740
			Upstream of U.S. Highway 460	*1,744
			Upstream of State Route 700	*1,809
			State Route 621	*1,843
			State Route 703	*1,937
			Approximately 2,700' upstream of State Route 703	*1,947
		Stony Creek	Confluence with New River	*1,598
			Norfolk & Western Railroad	*1,598
			Downstream of State Route 720	*1,696
			Upstream of State Route 739	*1,782
			Upstream of State Route 635	*1,900
			Approximately 2,600' upstream of State Route 635	*1,915
		Little Stony Creek	Corporate Limits, Town of Pembrooke	*1,797
			Upstream of State Route 688	*1,801
			State Route 624 (Extended)	*1,947
			Approximately 80' upstream of State Route 624 (Extended)	*1,949
		Spruce Run	Approximately 1,975' downstream of State Route 610	*1,660
			Upstream of State Route 610	*1,722
			Upstream of 2nd crossing State Route 605	*1,849
			Upstream of 4th crossing State Route 605	*1,946
			4th Private Drive	*2,092
			5th Private Drive Upstream	*2,109
		Doe Creek	Corporate Limits, Town of Pembrooke	*1,756
			Upstream of Private Road	*1,770
			Upstream of State Route 678	*1,918

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Upstream of State Route 615	*1,998
			Approximately 160' upstream of State Route 615	*2,000
		Laurel Branch	Confluence with Stony Creek	*1,851
			State Route 635	*1,873
			Private Road	*2,111
			Approximately 4,000' upstream of Private Road	*2,373
		Piney Creek	Approximately 150' downstream of Norfolk and Western Railway	*1,550
			Upstream of Norfolk and Western Railway Upstream	*1,556
			Private Drive	*1,564
			Approximately 1.1 miles upstream of Private Drive	*1,950
		Greenbrier Branch	Confluence with Sinking Creek	*1,871
			Upstream of State Route 42 upstream	*1,873
			Upstream of State Route 796	*1,929
			Upstream of State Route 802	*1,986
			State Route 605	*1,999
			Approximately 140' upstream of State Route 605	*2,001
Maps available for inspection at the County Administrator's Building, Pearisburg.				
Washington	Kirkland (city) King County (FEMA-5873).	Forbes Creek	At the intersection of Forbes Creek and center of 108th Avenue	*48
			At the intersection of Forbes Creek and center of Northeast 108th Street (most upstream crossing).	*89
		Unnamed Drainageway Shallow Flooding.	At the intersection of 3rd Street and Commercial Street	*28
		Yarrow Creek	Along Yarrow Creek 100 feet northwest from intersection of creek with State Highway 908.	#1
Maps available at 210 Main Street, Kirkland, Washington.				
Wisconsin	(V), Combined Locks, Outagamie County (Docket No. FEMA-5895).	Fox River	Downstream corporate limit	*660
			Downstream face of Combined Locks Dam	*661
			Upstream face of Combined Locks Dam	*677
			Downstream face of Little Chute Dam	*680
			Upstream face of Little Chute Dam	*692
		Garners Creek	Mouth at Fox River	*660
			Just upstream of State Street bridge	*664
			Just downstream of Park Street bridge	*672
Maps available for inspection at the Village Clerk's Office, Village Hall, 405 Wallace Street, Combined Locks, Wisconsin 54113.				
Wisconsin	(Uninc.), Dodge County (Docket No. FEMA-5895).	Rock River	About 1,000 feet east of Water Street and 1,000 feet south of U.S. Highway 16.	*812
			Just upstream State Highway 60	*849
			About 2,000 feet upstream from State Highway 60 at City of Hustiford corporate limits.	*850
			Just upstream County Highway S	*857
			About 2 miles upstream County Highway S	*857
			About 2.25 miles upstream County Highway S at City of Horicon corporate limits.	*858
		Sinissippi Lake	Entire shoreline within county	*857
		Fox Lake	Entire shoreline within county	*892
		Beaverdam Lake	Entire shoreline within county	*873
		Crawfish River	Just upstream of county boundary, about 2.25 miles downstream of Mill Pond Dam.	*823
			About 840 feet downstream of Mill Pond Dam	*826
			Just downstream from Chicago-Milwaukee-St. Paul and Pacific Railroad.	*831
			About 0.4 mile upstream from Chicago-Milwaukee-St. Paul and Pacific Railroad.	*832
			Just upstream from U.S. Highway 151 bypass	*834
			Just downstream State Highway 73 at county boundary	*835
		East Branch Rock River	Just upstream from Mayville extra-territorial limits	*922
			Just downstream from Gill Road	*926
			About 0.3 mile downstream from Village of Theresa corporate limit	*931
			Just downstream from Village of Thresea corporate limit	*932
		Maunesha River	About .34 mile upstream from State Highway 19	*792
			About 1.6 miles upstream from State Highway 19 at county boundary	*796
		Silver Creek	Just upstream from City of Watertown corporate limits	*813
			Just upstream from U.S. Highway 16	*817
			About 0.25 mile upstream from U.S. Highway 16	*817
		Davy Creek	About 1.16 miles downstream from Lincoln Road	*849
			Just downstream from State Highway 67	*849
Maps available for inspection at the Dodge County Office Building, Juneau, Wisconsin 53039.				
Wisconsin	(V), Little Chute, Outagamie County (Docket No. FEMA-5895).	Fox River	Downstream corporate limits	*658
			Just downstream Combined Locks Dam	*661
			Just upstream Combined Locks Dam	*677
			Just downstream Little Chute Dam	*680
			Just upstream Little Chute Dam	*692
			Upstream corporate limits	*694
Maps available for inspection at Village Clerk's Office, Village Hall, P.O. Box 163, Little Chute, Wisconsin 54140.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2231 Filed 1-23-81; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 179

[Docket No. HM-174; Amdt. Nos. 173-145, 179-27]

Shippers; Specifications for Tank Cars

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration.

ACTION: Final rule.

SUMMARY: This document changes the construction and maintenance standards for railroad tank cars used to transport hazardous materials so as to improve safety. The changes are as follows:

(1) Existing Specification 105 tank cars, those built before March 1, 1981, are to be retrofitted with a coupler vertical restraint system equivalent to that now required on Specification 112 and 114 tank cars over a one-year period ending on February 28, 1982;

(2) All other DOT specification tank cars are to be equipped with a coupler vertical restraint system equivalent to that now required on Specification 112 and 114 tank cars over a four-year period ending on February 28, 1985;

(3) After February 28, 1981, newly built Specification 105 tank cars are to be equipped with a coupler vertical restraint system equivalent to that now required on Specification 112 and 114 tank cars;

(4) After August 31, 1981, newly built Specification 105 tank cars transporting flammable gases, anhydrous ammonia and ethylene oxide are to be equipped with a tank head puncture resistance system equivalent to that now required on certain Specifications 112 and 114 tank cars;

(5) After August 31, 1981, newly built Specification 105 tank cars transporting flammable gases and ethylene oxide are to be equipped with a thermal protection system equivalent to that now required on certain Specification 112 and 114 tank cars; and

(6) After August 31, 1981, newly built specification 105 tank cars transporting flammable gases and ethylene oxide are to be equipped with safety relief valves sized according to the requirements for Specification 112 and 114 tank cars.

EFFECTIVE DATE: These rules will become effective on March 1, 1981.

FOR FURTHER INFORMATION CONTACT: Leavitt A. Peterson (Office of Safety), Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–0897.

SUPPLEMENTARY INFORMATION: These amendments are the result of the joint efforts of the Federal Railroad Administration (FRA) and the Materials Transportation Bureau (MTB). In accordance with internal Department of Transportation (DOT) procedures, the FRA has developed the substantive provisions of this rule for review and issuance by the MTB.

The MTB proposed a series of revisions in a notice published on July 21, 1980 (45 FR 48671). Interested persons were requested to submit their views. Comments received were from individual shippers, shipper organizations, a railroad organization, a rail labor organization, the National Transportation Safety Board (NTSB), and tank car manufacturers. All of the comments have been carefully reviewed and fully considered during the formulation of the final rule set forth in this document.

With the exception of shelf couplers, the FRA and the MTB deliberately separated new car construction requirements under this rulemaking action from retrofit matters under Docket HM–175. This action allows the MTB to clearly state that the decisions reached in HM–175 are independent of the decisions that may be reached in HM–175.

Discussion of Comments

General. Several commenters expressed the opinion that the MTB was mandating changes without sufficient accident analysis. One commenter stated that a derailment accident history comparison between 112/114 and 105 tank cars for the period 1965 through mid-1979 shows that, on the basis of car-year exposure, the 105 car as a group is less vulnerable to head puncture, shell puncture, fitting damage, rupture, and lading loss than other tank car types. Although the source of this data is not stated, it apparently came from a study of the 105 tank car population and accident data published by the Railway Progress Institute and the Association of American Railroads (Report No. RA–17–1–43; August 1980). It should be recognized that conclusions based on the car accident data are dependent upon how the data are statistically normalized to reflect, among other things, that more than twice as much flammable gas is transported in 112/114 tank cars than in 105 tank cars.

In analyzing accident data over the last 25 years, the FRA has concluded that 105 tank cars have been involved in a number of train accidents with consequences similar to 112 and 114 tank cars dramatizing the importance of assuring that these tank cars are equipped with a level of safety protection consistent with the risk.

Several commenters also expressed the opinion that the MTB was mandating changes without sufficient testing of Specification 105 tank cars. Some commenters discussed the detailed testing of 112/114 tank cars and suggested that similar testing of 105 cars be performed prior to mandating changes in 105 tank cars. Over the last 10 years, the FRA has built test facilities and conducted numerous tests in cooperation with various industry groups. Researchers investigated the capability, feasibility and even the practical aspects of life cycle durability of tank car safety improvement options. An extensive portion of the resulting findings relate directly to puncture resistance, thermal protection and safety valve systems regardless of the particular application to a tank car type, whether it be a 112, 114 or 105.

The thrust of many commenters' arguments seems to be that the MTB should defer applying the HM–144 performance standards to the 105 tank cars until it determines the degree to which currrent 105 tank car designs meet those standards. The FRA and the MTB are confident that they have adequate information to proceed with this final rule without delay because:

(1) the data base resulting from earlier tests and experience with DOT Specification 112 and 114 tank cars is appropriate;

(2) in terms of the commenters' concerns, this rule applies only to new tank cars that, except for one additional commodity, will carry the same commodities covered in HM-144; and

(3) it is unrealistic to expect that all variations of the 105 tank car designs can or need to be tested as systems.

Furthermore, the FRA research program is not intended to identify all feasible options that satisfy the performance specifications promulgated in Docket HM-144 and which are being extended in this rule. The supply industry has the necessary expertise to develop any new options that they feel may be more cost effective than the existing options being used on 112 and 114 tank cars. Indeed, at the present time the FRA and the Railway Progress Institute are using FRA facilities to test various combinations of jacketed systems and thermal coatings. The FRA and the MTB believe that sufficient analysis and testing, including full scale testing of 112 tank cars, has been conducted in order to proceed with changes in new 105 tank car requirements. Some 105 tank cars which meet the head and thermal protection requirements of this rule are being built presently. Moreover, as was noted by many of the commenters, there is a great diversity of 105 tank car designs. Therefore, the FRA and the MTB believe that it would be a prohibitive burden to require that each 105 tank car design be subjected to full scale fire, impact, and valve testing. However, FRA has facilities at the Transportation Test Center where appropriate testing as previously established in HM-144 can be performed by any tank car builder or owner at reasonable expense.

Several commenters suggested that the DOT should be more concerned with the causes of rail accidents, such as poor track maintenance and operational problems, rather than mandating changes to 105 tank cars. FRA has research, regulatory, and Federal assistance programs underway to improve track maintenance, equipment maintenance and operating practices. In addition, the FRA recently completed a study, requested by Congress, on the relationship of the size, weight, and length of rail cars to the safety and efficiency of rail transportation that points the way for further improvements in freight car design. However, these efforts will not eliminate all accidents. FRA and the MTB believe that although the risk to the public from hazardous materials will be reduced by these efforts, there is still a need to improve the safety of tank cars that carry certain hazardous materials.

Many commenters gave examples of why commodities should be separately treated with respect to thermal and tank head protection. They believe it is not necessary to add safety requirements to tank cars used to transport certain commodities, for example, carbon dioxide. This particular commodity is not toxic and will not support a fire. Many commenters supported commodity specific tank car requirements in a general way and some provided more specific recommendations, such as:

—gives its acquiescence to the *present* HM-144 thermal and tank head protection systems only for flammable gases in new specification 105 cars as this acknowledges the reality of current car builder practices.

—agrees that new construction of 105 cars for these commodities should incorporate the same puncture and thermal protection requirements intended for 112 and 114 cars for transporting the same commodities.

There is substantial justification to limit added safety features only to tank cars transporting commodities that need extra protection as was prescribed by the HM-144 amendment.

Although there are administrative and operational advantages in specifying uniform safety protection requirements which would apply to every new 105 tank car, the MTB agrees with those commenters who suggested continuing the specific commodity and class designation approach of HM-144.

The information assembled in this proceeding has persuaded the MTB that higher levels of 105 tank car protection are called for with respect to the same kinds of commodities that earlier prompted the additional HM-144 requirements for 112 and 114 tank cars—flammable gases and anhydrous ammonia—plus one additional commodity having characteristics which approximate those of flammable gas—ethylene oxide. That information does not provide comparable justification for extending those requirements to 105 tank cars carrying other hazardous commodities. However, because FRA and MTB remain concerned with the adequacy of tank car puncture resistance and thermal protection for other hazardous commodities, we will continue to examine this question (e.g. HM-175) and initiate corrective regulatory action as necessary.

Specific Comments and Analysis of Major Issues

The following is a summary of the comments received and an explanation of the revisions made by the MTB in response to those comments.

Shelf Coupler Retrofit (§ 173.31). As proposed in the NPRM, paragraph (a)(6) of § 173.31 would require a coupler vertical restraint system (shelf couplers) to be installed on all 105 tank cars by December 31, 1981, and paragraph (a)(7) of § 173.31 would require the system on other DOT specification tank cars by December 31, 1984. The commenters supported overwhelmingly the idea that all 105 tank cars should be equipped with shelf couplers and noted that the requirement could be made effective immediately for new 105 tank car construction since it is already the practice. The only issues raised involved the time frame and priorities for the retrofit installation of couplers.

A majority of commenters requested that the final rule allow 18 months for retrofitting 105 tank cars. Several of these commenters noted that it is approximately 18 months from the publication of the NPRM (July 21, 1980) until the proposed date for retrofitting 105 tank cars (December 31, 1981), apparently presuming that the MTB intended an 18-month retrofit period. The specific reasons for requesting 18 months included perceived problems of availablility of the couplers and potential disruption of commerce due to shopping. The National Transportation Safety Board called for the expedited installation of shelf couplers on 105 tank cars, but declined to suggest an appropriate interval.

As to the other DOT specification tank cars, there was a similar general agreement that retrofit installation of shelf couplers is warranted. However, several commenters believe that the requirement should extend only to those other DOT specification tank cars that carry hazardous materials. On the other hand, other commenters stated that shelf couplers should be required to be installed on all new or rebuilt freight cars. There were differences among the commenters about priorities for retrofitting these tank cars as well as the appropriate time period to complete the process. The suggested interval ranged variously from an unspecified "expedited" basis to 48 months, 54 months, 60 months, 72 months, 78 months, 84 months, and even 108 months. The reasons advanced for time extensions included differing estimates as to: (1) the number of cars involved (2) the time required to locate, move and retrofit the cars, and (3) the availability of couplers. In addition, some commenters suggested that non-placarded cars be given additional time beyond the December 31, 1984, proposed date. Other commenters noted that whatever interval is chosen, the retrofit should focus first on those cars actually carrying hazardous materials; and one

commenter would accord priority to cars of 22,000 gallons or more.

One commenter believes that FRA underestimated the size of the total tank car fleet. However, AAR's *Yearbook of Railroad Facts* shows 178,069 tank cars in service at the end of 1979. FRA estimates that about 75 percent of the total tank car fleet carries placarded hazardous materials during all or part of its life. The 75 percent equates to the 135,000 DOT specification tank cars used as the starting figure in the economic evaluation. The estimate is supported by FRA analysis of tank car shipments and UMLER file data.

Based on analyses of total cars, performance on retrofits under HM–114 and coupler manufacturer capabilities and assurances, the MTB has set a February 28, 1982, completion date for the 105 tank car retrofit and a February 28, 1985, completion date for the retrofit of the other tank cars. The latter date provides a period of approximately 48 months from the effective date of the regulation. The four-year retrofit period is consistent with known industry capability and the established safety value of shelf couplers. Shelf coupler availability is not a limiting factor.

In the shelf coupler retrofit program for Specification 112 and 114 tank cars, it is estimated that more than 16,000 cars were equipped within six months. In the 112/114 tank car retrofit, arrangements were made with railroads and private shops to provide for application of couplers to many cars, with minimum delays, along major hazardous materials routes. Similar arrangements would be possible for the retrofit program required by this final rule. Other cars can be equipped during normal cyclical maintenance at the home shop. Although such a measure is not likely to be necessary given the experience of the 112/114 tank car retrofit, field application of couplers could be made if necessary.

As indicated in the NPRM, the FRA and the MTB estimate that of approximately 24,000 Specification 105 tank cars, 18,000 have not yet been equipped with shelf couplers. Of those tank cars bearing specifications other than 112/114 or 105, approximately 73,000 remain to be equipped.

The FRA and the MTB have established the key priority with respect to order of retrofit by requiring that all 105 tank cars be equipped during the first year. It would be both unnecessary and disruptive to specify a detailed order of retrofit for the remaining fleets based on car size, commodity carried, or annual mileage. The MTB believes that industry will utilize its specialized knowledge to assure that the tank cars carrying the most hazardous materials are retrofitted first. The incentive for industry to support such a program is economic. The incremental cost to retrofit tank cars carrying the most hazardous material first is minimal, if any, since the cars must be fitted within a limited time period under this rule. Industry will prefer under these conditions to achieve the greatest risk reduction. The benefit to industry is a decline in the potential of a serious accident and the accompanying costs. This approach by the MTB uses the free market system to get the best safety performance at the least cost to government and industry.

At the same time, the flexibility afforded by the final rule will permit intelligent planning by industry based on car availability and routine maintenance intervals. The FRA and the MTB believe that this flexibility will assure completion of the retrofit at an earlier date than would be the case if shippers and car owners were required to manage the logistics of equipping multiple groups of cars according to a rigid schedule.

Cars previously built to ICC or DOT specifications that are not in placarded hazardous materials service are not subject to this retrofit requirement unless and until they are placed in such service (see 49 CFR 179.1). However, shippers are cautioned that shelf couplers are "safety appurtenances" for which inspection will be required following the completion date of the respective retrofit periods (see 49 CFR 173.31(b)). Also, couplers may be changed at any time due to damage in the service environment; therefore, it is imperative that coupler type be ascertained at the time of loading to assure compliance with the regulations.

Compliance Reporting. Many commenters seemed to assume that a reporting system for the coupler vertical restraint retrofit is necessary, although none was proposed in the NPRM. The FRA and the MTB believe that it would be useful to measure compliance and are considering issuing an NPRM to require annual reports covering the DOT specification tank cars to be retrofitted by February 28, 1985. A suitable reporting procedure would help to measure progress and ensure that the deadline is met.

Requirements for Specific Commodities in Tank Cars

Sections 173.124, 173.314, and 173.354. These sections have been amended to require that certain new 105 tank cars meet the special requirements of § 179.106. Section 173.314 has also been amended to clarify that certain new and previously built 112 and 114 tank cars are required to meet the special requirements of § 179.105. The purpose of these changes is to alert readers of Part 173 to the changes in Part 179. Section 173.314 has been further amended to correct typographical errors in the table. These typographical errors occurred in the entries for difluoroethane; dimethylamine, anhydrous; monomethylamine, anhydrous; methyl chloride; trimethylamine, anhydrous; and liquified petroleum gas (pressure not exceeding 300 pounds per square inch at 105 degrees F).

Full Tank Head Puncture Resistance System Versus Lower Half System (§ 179.100–23)

As proposed in the NPRM, § 179.100–23 would require that each end of a DOT Specification 105, 112, and 114 tank car built after December 31, 1980, be equipped with a tank head puncture resistance system that covers the entire tank head. This was not proposed because of any inadequacy of the HM–144 tank head puncture resistance standard (lower half of the tank head). Indeed, the NPRM clearly stated that the "* * * HM–144 requirements represented a very satisfactory approach to the protection of pressure tank cars." Rather, full head system was proposed on the basis that "* * * human and economic losses resulting from individual accidents may dramatically exceed the levels previously anticipated." However, the dramatically higher costs only occur if there is an accident. The majority of commenters opposed the proposed full tank head system on the basis that the FRA did not identify any accident where a car equipped to the HM–144 standard (shelf couplers and half head) had failed to protect the tank head. The FRA and the MTB agree that there is not to date any specific accident data demonstrating that HM–144 tank head protection system is inadequate. The FRA and the MTB also agree that there is not to date any clearly identifiable additional margin of safety provided by a full tank head puncture resistance system that would warrant Federally mandating the full tank head protection system.

Several commenters representing major groups did support a full tank head puncture resistance system. Their comments did not contain an analysis of what additional protection would be provided by a full head system or any accident history of HM–144 equipped cars indicating a failure of the HM–144 system. In the absence of definitive accident data, and in light of benefits

attributed by the NTSB and other commenters to the combination of half head protection in conjunction with shelf couplers, the FRA and the MTB do not believe it is appropriate to impose rigid Federal requirements for a full tank head puncture resistance system. Accordingly, the MTB is not requiring full head protection for 105, 112, and 114 tank cars as proposed in the NPRM, but is instead extending the same HM-144 requirements to the 105 tank cars defined in § 179.106-2. Consequently, editorial changes in the title and text have been made in the final rule to clarify that this section is an alternative requirement for all tank cars required to satisfy the head puncture resistance requirements of § 179.105-5.

Even though not required by this rule, the FRA and the MTB note with approval some evidence of evolving voluntary industry practice to provide full head protection.

§ 179.106 Special Requirements for Specification 105 Tank Cars

§ *179.106-1 General.* The 105 tank car special requirements are set forth in § 179.106. Several commenters objected to paragraph (b) of § 179.106-1. Paragraph (b) provides that AAR approval is not required for changes or additions to Specification 105 tank cars for compliance with § 179.106. The FRA and the MTB recognize that the existing car owner/rail carrier approval system which is set forth in AAR "Interchange Rules" may be continued by the AAR Tank Car Committee and that its approval for interchange may, therefore, be required by industry for all additions, modifications and repairs performed to comply with § 179.106. However, the FRA and the MTB to not believe that this approval needs to be imposed by regulation. These standards adopted for improved tank car safety are augmented by specific performance oriented design criteria (such as specified couplers, head shield designs and thermal protection systems) thereby affording tank car owners sufficient guidance to perform the modifications and additions required by this rule. For these reasons the MTB had not included a requirement for AAR Tank Car Committee approval in the rule.

New Car Requirements (§ 179.106-2). The requirements for new 105 tank cars are set forth in § 179.106-2. The requirements for coupler vertical restraint systems have previously been discussed. The analyses of the comments relating to the tank head puncture resistance systems; the thermal protection systems and the safety relief valve requirements are discussed separately.

The MTB has decided to allow more time before newly built tank cars must comply with this section. It has become apparent from comments submitted that the NPRM's effective compliance date of January 1, 1981, might cause unreasonable delays in the delivery of tank cars already ordered. The FRA and the MTB recognize the problems associated with lead times in construction procurements. The rule provides a six-month period from the effective date to the time when a newly built tank car must comply with this section. This period will give adequate time for car orders to be filled by the builder in accordance with this rule. In prescribing the September 1, 1981, date, the FRA and the MTB considered, but rejected, numerous suggestions that the rule be based upon the date ordered. One commenter stated: "Because of shop backlogs of up to two years * * * any changes in specifications must be referenced to car order date rather than car built date." The FRA and the MTB decided that a "date ordered" basis would lead to delays in installing the safety systems of up to two years and confusion in identifying those newly built cars which must comply with the rule. It is worthwhile to mention that FRA has been advised that many new 105 tank cars that will carry flammable gases are already being constructed in compliance with the tank head and thermal requirements of this rule.

Tank Head Puncture Resistance System (§ 179.106-2). Several commenters supported full tank head puncture resistance requirements for all newly constructed 105, 112, and 114 tank cars. Several other commenters supported the HM-144 standard for head protection (lower half of the tank head) on all newly constructed 105 tank cars. One commenter supported the full head requirement for new 105 tank cars, while offering no opinion regarding the 112 and 114 tank cars. Most commenters supported commodity differentiation and were not opposed to the principle of mandating HM-144 standards on those 105 tank cars that carry the same commodities as the 112 and 114 tank cars (flammable gases and ammonia). One commenter noted that the industry has voluntarily installed head protection on 105 tank cars carrying flammable gases for several years.

The majority of commenters, however, were opposed to requiring either full or HM-144 equivalent head protection on all new 105 tank cars without regard to the commodity being carried. These commenters noted that commodity differentiation was an integral part of HM-144 requirements applicable to 112 and 114 tank cars. According to these many commenters, the wide variety of commodities carried in the 105 tank cars and the attendant cost of providing an all encompassing level of protection precludes mandating the same head and thermal protection system for every 105 tank car.

Other objections to the proposed tank head requirements for 105 tank cars were raised. Some commenters reiterated that the accident record indicates that the 105 tank car is superior to the 112 and 114 tank cars in its ability to survive an accident environment. Hence, they contend that there is not a similar justification for the additional requirements as there was in HM-144. In addition, a number of commenters stated that the incremental benefit of shelf couplers reduces the safety benefit of a tank head protection system to an unacceptably small level.

The MTB is extending HM-144 head puncture resistance requirements to new 105 tank cars that will carry the HM-144 commodities and ethylene oxide, notwithstanding the allegedly better safety record of 105 cars when compared to the unretrofitted 112 and 114 cars. A relatively better overall safety record is not at all suprising since 105 tank cars have some insulation and varying degrees of additional tank head puncture resistance. While the thermal insulation and head protection systems of many 105 tank cars do not meet the HM-144 standard, nevertheless, as a group, 105 tank cars do provide varying degrees of additional protection over the unretrofitted 112 and 114 tank cars. Having established a specified level of tank head puncture resistance and thermal requirement in HM-144 for certain commodities carried by 112 and 114 tank cars, the MTB has no hesitation about utilizing that same standard for 105 tank cars carrying those same commodities.

The FRA and the MTB do not agree with the argument that shelf couplers provide an adequate level of safety that eliminates the need for tank head protection. Essentially the same issue was raised and rejected in the HM-144 proceedings. Tests performed as early as 1976 at the Transportation Test Center in Pueblo, Colorado, demonstrated that shelf couplers will prevent tank head punctures during some overspeed switching impacts. However, for other impacts under differing conditions, shelf couplers were not fully effective in preventing tank head punctures while half head shields were effective in preventing most punctures. It was also found that a combination of shelf couplers and half

head shields was needed to prevent tank head punctures over the range of realistic impact conditions.

The FRA and the MTB have concluded that certain newly built 105 tank cars need a coupler restraint system and a tank head puncture resistance system. This dual protection, required for 112 and 114 tank cars in 1977, will significatly reduce tank punctures in derailments and switch yard accidents.

High Temperature Thermal Protection

§ *179.106–2 New Cars.* The level of thermal protection proposed for 105 tank cars is from § 179.105–4 (HM–144 thermal protection standard). Almost all the commenters opposed the NPRM proposal for thermal protection on all newly built DOT 105 tank cars. More than one-half of all commenters said that if thermal protection were to be required for all DOT 105 tank cars without regard to commodity, the rule should be deferred pending additional testing and data.

Several other objections were raised on various points. Most of these were aimed at the cost consequences of requiring added safety systems of marginal benefit for the transport of commodities where, these commenters contend, the accident history does not justify additional safety features.

The FRA has reviewed the accident history and has not found any justification for not requiring the same level of thermal protection in 105 tank care when they carry the identical hazardous commodities as 112 and 114 cars. On the other hand, there are some commodities presently authorized in 105 tank cars that pose a lower risk in fire environments.

The MTB has revised the NPRM proposal so that the final rule formally extends the thermal protection standards of § 179.105–4 to 105 cars transporting flammable gases and ethylene oxide. Ethylene oxide is included because it has properties comparable to flammable gases. Ethylene oxide has a very low flash point (less than 0 degrees F) and does not need oxygen for combustion. It is flammable over an unusually wide range of mixtures with air, from 2 percent through 100 percent. Additionally, it barely misses the temperature/pressure relationship for being classified as a flammable gas. Its vapor pressure is 38.5 psi absolute at 100 degrees F, which is extremely close to the pressure criterion of 40 psi absolute at 100 degrees F that is used to define a flammable gas under DOT regulation (49 CFR 173.300). (The UN recommendations and IMCO Code both classify ethylene oxide as a flammable gas.)

The MTB recognizes that some existing 105 tank cars have thermal protection systems that may already meet the thermal protection requirements. DOT has previously approved various thermal protection systems and maintains a list of those approved systems. Tank cars built with approved systems are excepted from the test verification requirements of paragraph (b) of § 179.105–4. Information on these systems is available in the Dockets Branch, Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The MTB has established a September 1, 1981, date for the thermal protection system requirement. The six-month period after the effective date of this rule is included for the reasons discussed in the tank head puncture resistance section.

Safety Relief Valves (§ 179.106–2). Most commenters objected to the proposal for the larger flow capacity safety valve for all commodities authorized to be carried in DOT Specification 105 tank cars. Since the final rule for the larger safety valve applies only to those DOT Specification 105 tank cars which carry flammable gases and ethylene oxide, the justification for the larger valve is the same as that given in HM–144.

In summary, extensive research, conducted both before and after the rulemaking under HM–144, has indicated that:

(1) Since rail cars often overturn in accidents, the controlling condition in sizing for pressure relief is the liquid flow or upset car condition and not exclusively the vapor flow criterion used prior to HM–144; and

(2) Existing valve sizing equations underestimate the total heat flux inputs which can occur in accident environments.

Accordingly, the MTB has modified § 179.106–2 to specify that revised valve sizing is applicable only for new 105 tank cars carrying flammable gases and ethylene oxide. For the commodities covered by HM–144, valves with sufficient capacity have been satisfactorily used in extensive 112/114 tank car service and pose no real installation obstacles for new Specification 105 tank cars. As with the tank head puncture resistance system and the thermal protection system, MTB has established a September 1, 1981, date for the revised safety valve requirement.

§ *179.106–3 Previously Built Cars.* This section requires the retrofitting of shelf couplers on all existing 105 tank cars by February 23, 1982. The issues have been discussed under § 173.31.

§ *179.106–4 Stenciling.* Several commenters recognized the concept proposed in the NPRM for using the letter "J" to indicate full tank head and thermal protection, as logical. They went on to recommend a broader system to comprehend the several DOT 105 tank car designs already in service and to anticipate the possible regulatory changes that may affect some existing cars. For example, the following non-conflicting letters were suggested: "A" standard jacket head; "S" for ½ inch half high head shield; "T" for ½ inch half high head shield plus nonjacketed high temperature thermal protection; "U" for ½ inch half high head shield plus high temperature thermal protection under metal jacket; "H" for ½ inch full head shield; "K" for ½ inch full head shield and nonjacketed high temperature thermal protection; and "J" for ½ inch full head shield plus thermal protection under metal jacket. These commenters further offered that this scheme would facilitate record keeping for DOT 105 tank cars.

The FRA and the MTB do not agree that an elaborate lettering system that includes the variety of existing car designs is necessary at this time. Additional car categories may become necessary in the future because of further regulatory actions, but MTB does not believe it is appropriate to anticipate what those actions might include. Accordingly, the final rule adopts the letters A, S, and J for three categories of 105 tank cars. It provides an identification system that is consistent with the 112/114 tank car identification system.

Other Discussion

Economic Impact. The FRA included an economic evaluation for the docket when the NPRM was issued. That evaluation included cost figures for full head shields on all newly built 105, 112 and 114 tank cars. It also included cost figures for shelf couplers, thermal protection and safety valves as specified by HM–144 on all newly built 105 tank cars. The final rule requires that newly built 105 tank cars carrying flammable gases have lower half head protection, thermal protection and safety valves. The rule also requires shelf couplers, lower half head protection, thermal protection and safety valves for newly built 105 tank cars carrying ethylene oxide. Finally, the rule requires shelf couplers and lower half head protection for newly built 105 tank cars carrying anhydrous ammonia. These changes reduce the scope of the rule and the overall industry cost. The MTB believes

that the benefits identified in the earlier analysis will not be significantly reduced despite the reduced scope of the final rule since the commodities included in the final rule are the ones that have historically resulted in costly accidents. Accordingly, the MTB believes another economic evaluation is not warranted. A new economic evaluation taking into account the adjustments made in the final rule would continue to show that this regulation will not have a major adverse economic impact on industry, the public or government.

Several commenters expressed concern that the proposed safety modifications would add to the tank car weight. These commenters were concerned that the added weight would reduce the amount of commodity that could be transported in the car. This weight sensitive concern is not significant because of the limited scope of the final rule. FRA estimates that only a very small percent of the total volume of all hazardous commodities transported by railroads would be affected.

Beyond general expressions of negative cost/benefit from treating all 105 tank cars the same and from requiring full head shields, the commenters provided very little specific cost data. After a thorough review of initial calculations in the economic evaluation prepared for the NPRM, the FRA and the MTB conclude that the original estimates are accurate.

Finally, as previously mentioned, one commenter who did not provide supporting details, argued that the number of cars needing shelf couplers is much greater than the MTB estimate. The FRA has reexamined this issue. Based on the best data to which it has access, the FRA has found that the initial estimate is reasonably accurate for establishing that a four-year period provides sufficient time to complete the shelf coupler retrofit without severe economic penalty.

Editorial Changes

In addition to the substantive matters discussed above, the MTB has also made several editorial changes in Part 179 for the purpose of clarity. These changes do not result in any substantive change from the prior regulation or the proposal made in the Notice of Proposed Rulemaking and adopted in this amendment.

In consideration of the foregoing, Parts 173 and 179 of Title 49 Code of Federal Regulations are amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. In § 173.31 paragraph (a)(3) is amended by adding new paragraphs (vii) and (viii) and paragraphs (a) (6) and (7) are added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *
(3) * * *

(vii) When a class DOT–105A tank car is prescribed, class DOT–105S and DOT–105J tank cars having equal or higher marked test pressures than those prescribed may also be used.

(viii) When class DOT–105S tank car tanks are prescribed, class DOT–105J tank cars having equal or higher marked test pressures than those prescribed may also be used.

* * * * *

(6) After February 28, 1982, each Specification 105 tank car shall be equipped with a coupler vertical restraint system in accordance with § 179.105–6 of this subchapter.

(7) After February 28, 1985, each DOT Specification tank car shall be equipped with a coupler vertical restraint system in accordance with § 179.105–6 of this subchapter.

2. In § 173.124, paragraph (a)(5) is amended by adding a new paragraph (ii) to read as follows:

§ 173.124 Ethylene oxide.

(a) * * *
(5) * * *

(ii) Each Specification 105 tank car built after August 31, 1981, used for the transportation of ethylene oxide, shall conform to DOT Specification 105J.

* * * * *

3. In § 173.314(c), the Table and Notes 23 and 24 are revised to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

* * * * *

(c) * * *

Kind of gas	Maximum permitted filling density, Note 1	Required tank car, see 173.31(a)(2) and (3)
Anhydrous ammonia	50	DOT–106A500–X, Note 25.
	57	DOT–105A300W, Note 24.
	57	DOT–112S400F, 112S340–W, 114S340–W, Note 15.
	58.8	DOT–112S400F, 112S340–W, 114A340–W, Note 15.
* *	* *	* * *
Butadiene (pressure not exceeding 75 pounds per square inch at 105°F.) inhibited.	Notes 18 and 21	ICC–105A100 [1], 105A100–W, 111A100–W–4, Notes 4 and 23.
Butadiene (pressure not exceeding 255 pounds per square inch at 115°F.), inhibited.	Notes 18 and 21	DOT–112T340W, 112J340W, 114T340W, 114J340W, Notes 4 and 20.
Butadiene (pressure not exceeding 300 pounds per square inch at 115°F.), inhibited.	Notes 18 and 21	DOT–112T400W, 112J400W, 114T400W, 114J400W, Notes 4 and 20.
* *	* *	* * *
Difluoroethane	79	DOT–106A500X, 110A500–W, Note 25.
	79	DOT–112T400W, 112J400W.
	84	DOT–105A300–W, Note 23.
Difluoromonochloroethane, Note 13.	100	DOT–106A500X, 110A500W, Note 25. DOT–105A100W, Notes 4 and 23.
Dimethylamine, anhydrous	59	DOT–106A500X.
	62	DOT–105A300–W, Notes 4, 23 and 26.
	61	DOT–112T340W, 112J340W, Note 26.
Dimethyl ether	59	DOT–106A500X, 110A500–W.
	62	DOT–105A300W, Notes 4 and 23.
* *	* *	* * *
Liquid hydrocarbon gas (pressure not exceeding 75 pounds per square inch at 105°F).	Note 21	ICC–105A100 [1], 105A100–W, 111A100–W–4, Notes 4 and 23.
Liquid hydrocarbon gas (pressure not exceeding 225 pounds per square inch at 105°F).	Note 21	DOT–105A300–W, Notes 4 and 23.
Liquid hydrocarbon gas (pressure not exceeding 300 pounds per square inch at 105°F).	Note 21	DOT–105A400–W, Notes 4 and 23.
Liquid hydrocarbon gas (pressure not exceeding 375 pounds per square inch at 105°F).	Note 21	DOT–105A500–W, Notes 4 and 23.
* *	* *	* * *
Liquid hydrocarbon gas (pressure not exceeding 450 pounds per square inch at 105°F).	Note 21	DOT–105A600–W, Notes 4 and 23.

Kind of gas	Maximum permitted filling density, Note 1	Required tank car, see 173.31(a)(2) and (3)
Liquefied petroleum gas (pressures not exceeding 75 pounds per square inch at 105°F).	Note 18	ICC-105A100 [1], 105A100-W, 111A100-W-4, Notes 4 and 23.
Liquified petroleum gas (pressure not exceeding 150 pounds per square inch at 105°F).	Note 18	DOT-105A200-W, 105A200AL-W, Notes 4 and 23.
Liquefied petroleum gas (pressure not exceeding 225 pounds per square inch at 105°F).	Note 18	DOT-105A300-W, Notes 4, 20 and 23.
Liquefied petroleum gas (pressure not exceeding 225 pounds per square inch at 115°F).	Note 18	DOT-112T340-W, 112J340-W, 114T340W, 114J340-W, Notes 4 and 20.
* *	* *	* * *
Liquefied petroleum gas (pressure not exceeding 300 pounds per square inch at 115°F).	Note 18	DOT-112T400-F, 112J400-F, 112T400-W, 112J400-W, 114T400-W, 114J400-W, Notes 4 and 20.
Liquefied petroleum gas (pressure not exceeding 375 pounds per square inch at 105°F).	Note 18	DOT-105A500-W, Notes 4, 20 and 23.
* *	* *	* * *
Liquefied petroleum gas (pressure not exceeding 450 pounds per square inch at 105°F).	Note 18	DOT-105A600-W, Notes 4, 20 and 23.
Methylacetylene-propadiene, stabilized.	Note 22	DOT-105A300W, 112T340W, 112J340W, 114T340W, 114J340W, 106A500X, Notes 4, 9 and 23.
Methyl chloride	84	DOT-106A500X, Note 7.
	85	DOT-112T340W, 112J340W, Note 4.
	86	DOT-105A300W, Notes 4 and 23.
Methyl chloride-methylene chloride mixture.	Note 22	DOT-106A500X, Notes 7 and 14. DOT-105A300-W, Notes 4 and 23.
Methyl mercaptan	80	DOT-106A500X, Notes 7 and 14.
	82	DOT-105A300-W, Notes 4 and 23.
* *	* *	* * *
Monomethylamine, anhydrous	60	DOT-106A500X.
	62	DOT-105A300W, Notes 4, 23 and 26.
	61	DOT-112T340W, 112J340W, Notes 4 and 26.
* *	* *	* * *
Trifluorochloroethylene	115	DOT-106A500X, 110A500W, Note 25.
	120	DOT-105A300-W, Notes 4 and 23.
Trimethylamine, anhydrous	57	DOT-106A500X.
	59	DOT-105A300W, Notes 4, 23 and 26.
	58	DOT-112T340W, 112J340W, Notes 23 and 26.
Vinyl chloride, Note 9	84	DOT-106A500X, Note 7.
	87	DOT-105A200W, Notes 4, 16 and 23.
	86	DOT-112T340W, 112J340W, 114T340W, 114J340W, Note 4.
Vinyl fluoride, inhibited	58	DOT-105A600-W, Notes 17 and 23.
Vinyl methyl ether, Note 9	68	ICC-105A100 [1], 105A100W, Notes 4 and 23.
	68	DOT-106A500X, Note 7.

* * * * *

Note 23.—Each Specification 105 tank car built after August 31, 1981, shall conform to class DOT-105J.

Note 24.—Each Specification 105 tank car built after August 31, 1981, shall conform to class DOT-105S.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

§ 179.14 [Amended]

4. In § 179.14, paragraphs (a)(1), (2) and (4) are deleted; current paragraph (a)(3) is redesignated (a)(1) and current paragraph (a)(5) is redesignated (a)(2).

5. In § 179.100–23, the heading and paragraph (a) introdutory text is revised to read as follows:

§ 179.100–23 Alternative requirements for tank head puncture resistance systems.

(a) Tank cars required to have puncture resistance systems in accordance with § 179.105–5 may, as an alternative, be equipped with a head shield at each end of the car in accordance with the requirements of this section. The shield must be:

* * * * *

6. In § 179.102–12 the last sentence in paragraph (a)(2) is deleted and a new paragraph (a)(9) is added to read as follows:

§ 179.102–12 Ethylene oxide.

(a) * * *

(9) Each tank built after August 31, 1981, shall be constructed in accordance with class 105J.

7. In § 179.105–4, the last sentence of paragraph (c) is revised to read as follows:

§ 179.105.5 Thermal protection.

* * * * *

(c) * * * Information necessary to equip tank cars with one of these systems is available in the Dockets Branch, Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, between the

hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

* * * * *

8. New §§ 179.106—179.106–4 are added to read as follows:

§ 179.106 Special requirements for Specification 105 tank cars.

§ 179.106–1 General.

(a) In addition to the requirements of this section, each tank car built under Specification 105 shall meet the applicable requirements of §§ 179.100, 179.101, 179.102 and 179.104.

(b) Notwithstanding the provisions of §§ 179.3, 179.4, and 179.6, AAR approval is not required for changes in or additions to Specification 105 tank cars in order to comply with this section.

(c) Notwithstanding the provisions of § 173.8 of this subchapter, no Specification 105 tank car manufactured to specifications promulgated by the Canadian Transport Commission may be used after February 28, 1982, to transport hazardous materials in the United States unless it is equipped with a coupler vertical restraint system that meets the requirements of § 179.105–6.

(d) Notwithstanding the provisions of § 173.8 of this subchapter, no Specification 105 tank car manufactured after August 31, 1981, to specifications promulgated by the Canadian Transport Commission, may be used to transport hazardous materials in the United States unless it is equipped in accordance with§ 179.106–2.

§ 179.106–2 New cars.

(a) Each Specification 105A tank car built after February 28, 1981, shall be equipped with a coupler restraint system that meets the requirements of § 179.105–6.

(b) Each Specification 105S tank car built after August 31, 1981, shall be equipped with:

(1) A coupler restraint system that meets the requirements of § 179.105–6; and

(2) A tank head puncture resistance system that meets the requirements of § 179.105–5.

(c) Each Specification 105J tank car built after August 31, 1981, shall be equipped with:

(1) A coupler restraint system that meets the requirements of § 179.105–6;

(2) A tank head puncture resistance system that meets the requirements of § 179.105–5;

(3) A thermal protection system that meets the requirements of § 179.105–4; and

(4) A safety relief valve that meets the requirements of § 179.105–7.

(d) Each Specification 105 tank car shall be stenciled as prescribed in § 179.106–4.

§ 179.106–3 Previously built cars.

After February 28, 1982, each Specification 105 tank car built before March 1, 1981, shall be equipped with a coupler restraint system that meets the requirements of § 179.105–6.

§ 179.106–4 Stenciling.

(a) Each Specification 105 tank car that is equipped with a coupler restraint system that meets the requirements of § 179.105–6 and a tank head puncture resistance system that meets the requirements of § 179.105–5 shall be stenciled by having the letter "S" substituted for the letter "A" in the specification marking.

(b) Each Specification 105 tank car that is equipped with a coupler restraint system that meets the requirements of § 179.105–6, a tank head puncture resistance system that meets the requirements of § 179.105–5, a thermal protection system that meets the requirements of § 179.105–6, and a safety relief valve that meets the requirements of § 179.105–7, shall be stenciled by having the letter "J" substituted for the letter "A" in the specification marking.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, Appendix A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a major economic impact under the terms of Executive Order 12221 and DOT implementing procedures (44 FR 11034), nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and an environmental assessment are available for review in the docket.

Issued in Washington, D.C. on January 19, 1981.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 81–2746 Filed 1–23–81; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Bluefin Tuna

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final rule.

SUMMARY: This amendment to the regulations for the Atlantic bluefin tuna fishery (1) prohibits the use of longlines in a directed fishery for Atlantic bluefin tuna; (2) changes the incidental catch provisions for longline vessels operating south of 36° N. latitude from two percent of all species on board at the end of a trip, to two giant Atlantic bluefin tuna per vessel, per trip; and (3) prohibits buy-boats from purchasing or transporting any Atlantic bluefin tuna captured incidentially be longlines.

This amendment is necessary to (1) reduce the possibility of overfishing an already troubled resource, (2) stay within U.S. commitments to the Atlantic Tunas Convention Act, and (3) provide a basis to more adequately manage the domestic Atlantic bluefin tuna fishery throughout the U.S. Fishery Conservation Zone in the Atlantic Ocean and the Gulf of Mexico.

EFFECTIVE DATE: These regulations are effective January 21, 1981.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., or Arnet R. Taylor, Jr., Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930, Telephone (617) 281–3600.

SUPPLEMENTARY INFORMATION: On March 21, 1969, the International Convention for the Conservation of Atlantic Tunas (the Convention, 20 UST 2887; TIAS 6767) was entered into force for the United States. The United States, as a party to that Convention, fulfilled its obligations by enacting the Atlantic Tunas Convention Act of 1975 (16 U.S.C. Sections 971–971h; the Act). The Act directs the Secretary of Commerce to promulgate regulations which implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), established under the provisions of the Convention, and to carry out the purposes and objectives of the Convention. Those recommendations implemented by the regulations are basically: (1) to prohibit any taking and landing of Atlantic bluefin tuna weighing less that 6.4 kg (14 pounds) except for a 15 percent incidental catch allowance; and (2) to limit fishing mortality to recent levels.

In view of the varying mortality rates for different size classes of Atlantic bluefin tuna, the United States regulations were written in a manner which reflects the relationship of recent fishing mortality levels to a particular size tuna. The Secretary, through the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) monitors the stock levels of Atlantic

bluefin tuna to meet the obligations of the United States to implement the recommendations of the Commission. Both the Convention and the Act are directed towards "maintaining the populations of Atlantic bluefin tuna at levels which will permit the maximum sustainable catch for food and other purposes" (Preamble to the Convention). Since the Atlantic bluefin tuna fishery involves thousands of domestic fishermen and supplies a source of protein for United States and foreign markets, the Secretary has attempted to ensure the broadest possible access to the fishery while preventing serious economic dislocations as a result of any management scheme so imposed.

This philosophy has been a key component in the development of U.S. regulations for Atlantic bluefin tuna since the passage of the Atlantic Tunas Convention Act in 1975.

As part of a continuing effort by NMFS to carefully monitor the Atlantic bluefin tuna fishery, the agency became aware that during the 1980 winter/spring fishery in the Gulf of Mexico, a number of U.S. longline vessels fishing for swordfish began to land increasing quantities of giant Atlantic bluefin tuna.

The high ex-vessel prices paid for incidental catches of bluefin tuna in 1980 encouraged many U.S. fishermen to consider pursuing them as the target species in the 1981 winter/spring fishery. The successful Japanese longline operations in the Gulf of Mexico served to demonstrate the availability of this species. For example, estimates have been made of up to 500 U.S. vessels entering this fishery over the next 2 years as a result of poor economic conditions in the shrimp industry. The NMFS is concerned that the resource is not strong enough to withstand additional heavy fishing pressure; and that the development of a new directed fishery for Atlantic bluefin tuna is contrary to our ICCAT commitments. Many industry representatives petitioned the NMFS for either a longline quota or additional provisions in the regulations relating to the development of this fishery.

The NMFS believes an amendment to the present regulations is necessary because:

(1) In the next few months, the lack of specified regulations could encourage a substantial investment in fishing gear and processing facilities by U.S. industry as a result of a developing directed longline fishery for Atlantic bluefin tuna. Implementation of restrictive regulations after having geared up for this fishery would cause economic hardships and vocational displacement within the industry.

(2) Under the present regulations, longline catches of giant Atlantic bluefin tuna in the Gulf of Mexico are assigned to the southern handgear quota of 90 tons (approximately 270 fish). If no new regulations are in effect by the start of the Gulf of Mexico fishery which may begin by early January, the southern quota could be captured by these longliners before the end of the winter/spring Gulf fishery, necessitating a closure of the fishery by the NMFS. This would have the effect of preventing any further incidental retention of giant Atlantic bluefin tuna by vessels in the Gulf of Mexico and would close the summer/fall handgear fishery for giants off the Mid-Atlantic coast before that fishery ever began. It would also have adverse effects on the coastal areas where the handgear fishery for giant Atlantic bluefin tuna is conducted by eliminating the nonpriced, but substantial, recreational benefits normally associated with this fishery.

Lack of immediate regulations addressing an Atlantic bluefin tuna longline fishery could result in detrimental and long-term impacts upon the resource. Under the present system, the regulations are designed to address the purse seine and handgear fisheries, making the enforcement of longline activities difficult, especially south of Cape Hatteras. This could lead to extensive overfishing which, in addition to possibly damaging an already troubled resource, risks our present ICCAT commitment to keep fishing mortality at recent levels.

As a result of these concerns, on December 2, 1980, NOAA published proposed rules amending the regulations governing fishing for Atlantic bluefin tuna (45 FR 16506) which form the basis for these final regulations. Public hearings on the proposed regulations were held at six locations in Massachusetts, New Jersey, Florida, Louisiana, and Texas. Written comments were received through December 29, 1980.

In considering all the testimony and comments, NMFS was guided by several objectives. The regulations should: (1) comply with the conservation recommendations adopted under ICCAT; (2) provide the basis to more adequately address the conduct and management of the current domestic Atlantic bluefin tuna fishery; and (3) be enforceable.

The following text summarizes and discusses the public comments received during the comment period. A detailed description of changes and estimated impacts is found in the Environmental Assessment available from the Regional Director, Northeast Region, NMFS, 14 Elm Steet, Gloucester, Massachusetts 01930.

1. Prohibiting the use of Longlines in a Directed Fishery for Atlantic Bluefin Tuna.

The public comment reflected a general consensus that such a prohibition should include vessels of all nations and not be confined to U.S. flag vessels.

Some commentators objected to any restrictions on U.S. longline vessels, although the majority of commentators objected to this prohibition because Japanese longline vessels are permitted to take Atlantic bluefin tuna in waters adjacent to the U.S. coastline.

Several commentators suggested the U.S. should review its philosophy restricting the development of new Atlantic bluefin tuna fisheries, to respond to the poor economic conditions in the Gulf of Mexico shrimp industry. It was further stated that substantial investments had already been made by industry in gearing up for this fishery, and that the United States should renegotiate its allowable harvest within ICCAT to allow for an increase in the U.S. catch.

Commentators representing conservation organizations as well as three coastal States supported the proposal because of the immediate need to address the issue, but felt that better long-term options were available, and suggested further study. One commentator suggested the U.S. could define fishing mortality as an average over the years 1970–1974 to allow more latitude in increasing U.S. catches, thereby negating the need for this prohibition. Another suggested establishing critical habitat areas in the Atlantic and Gulf of Mexico where all longlining would be prohibited.

A number of commentators representing handgear fishermen and processors in the Northeast supported the proposal, citing the continuing concern about the resource and objecting to any change which would adversely affect their operations.

In balancing these comments with the present ICCAT commitments mandated under U.S. law, the NMFS believes that the proposed regulations represent a reasonable solution to this issue. NMFS also believes that an expansion of the United States Atlantic bluefin tuna fishery is inconsistent with the conservation objectives which it has agreed to within ICCAT. The issue of controlling foreign fishing activities for tunas is one which can be resolved only through new legislation. However, NMFS has and will continue to vigorously pursue discussions with Japanese officials and members of

industry to reduce gear conflicts and resolve any other difficulties that arise between Japanese and United States longliners. NMFS recognizes that some of the suggestions received have significant merit, and will continue to study the situation.

Therefore, the proposal to prohibit the use of longlines in a directed fishery for Atlantic bluefin tuna is adopted as proposed.

2. Change the Incidental Catch Provision for Longline Vessels Operating South of 36° N. Latitude from Two Percent of All Species on Board at the End of a Trip, to Two Giant Atlantic Bluefin Tuna Per Vessel, Per Trip.

NMFS proposed this change in the incidental catch provisions to address the different nature of the fishery in southern waters. It was and is believed that this provision aids both NMFS and industry in implementing an orderly management regime for Atlantic bluefin tuna in the waters south of Cape Hatteras. As part of this proposal, this incidental catch would not be deducted from the existing handgear quota. However, if the incidental catch becomes excessive (e.g., more than 750–1000 fish), the Regional Director, Northeast Region, will be authorized to restrict it further by prohibiting retention of Atlantic bluefin tuna that are caught incidentally. This would give longline fishermen an added incentive to avoid fishing practices likely to result in taking Atlantic bluefin tuna. Within this level of incidental harvest, the overall U.S. fishery would still be in line with the mortality levels at the time of the ICCAT recommendation, since overall U.S. fishing mortality on Atlantic bluefin tuna has decreased during the last several years. In monitoring the level of incidental catch, NMFS will include all fish caught on longline gear from January 1, 1981, onward. None of the 1981 incidental harvests by longline fishermen will be deducted from the 1981 handgear quotas.

When projected U.S. landings of Atlantic bluefin tuna reach a point where recent mortality levels will be exceeded, the Regional Director shall publish a Notice in the Federal Register prohibiting any further retention of giant Atlantic bluefin tuna captured incidentally by longline.

Many commentators suggested a variety of different catch rates rather than the proposed two per vessel, per trip. Their suggestions included one fish per day, two per day, and five per week. It was stated that the two fish per vessel, per day is more restrictive than the five per week presently allowed, despite the limited quota of 90 short tons.

Several commentators suggested no catch rate should be imposed, with Gulf vessel captains voluntarily remaining out of the areas of Atlantic bluefin tuna concentrations after the 750–1000 fish were captured.

One commentator suggested a change in the incidental catch rate to two fish per vessel, per trip or per week, whichever is greater, stating that the NMFS proposed wording would allow smaller vessels to make short trips of one to two days duration and conduct a limited directed fishery.

Several commentators stated that the felt an allowance of two fish per vessel, per trip was, in fact, a limited, directed fishery and not a true incidental catch provision.

Commentators at three of the Gulf hearings objected to the two fish per trip limit, stating that they would have to discard dead fish to stay within the law. Several others questioned whether any of this was enforceable, and recommended restricting the size of gear allowed to be used in certain areas.

Others suggested a more equitable geographic distribution of the present U.S. quotas, with one commentator suggesting NMFS perform an analysis to determine what, if any percentage of existing quotas could be reallocated without having detrimental impacts on the traditional fisheries. Several commentators suggested restricting the harvest of juvenile bluefin by U.S. purse seiners, to make additional numbers of giant fish available to U.S. longline and handgear vessels.

One commentator in the Northeast stated that increases should be made to the existing quotas for traditional fisheries before any allowances are made for "new" fisheries.

Commentators at two hearings objected to the existence of a dividing line at 36° N. latitude, stating that incidental catch provisions should be the same for all U.S. longline vessels.

All factors considered, the NMFS believes the proposed regulations provide the basis to permit a reasonable, but limited incidental catch of Atlantic bluefin tuna in a fishery targeted for other species. NMFS also believes that in the vast majority of instances, concentrations of Atlantic bluefin tuna do not occur in the same places and times as other species such as swordfish, and can therefore be avoided. NMFS does not promote the concept of throwing away dead fish, but believes that most large catches of Atlantic bluefin tuna by longline vessels would be the result of a directed effort to capture them, and not as the result of a true incidental catch. The regulation governing incidental catch provisions has not changed from that proposed.

3. Prohibit Buy-Boats From Purchasing or Transporting Any Atlantic Bluefin Tuna Captured Incidentally by Longlines.

This proposal developed from the concern that the only way to determine a true incidental catch, is to require catching vessels to land the fish. Sales of incidentally-caught Atlantic bluefin tuna to buy-boats at sea would pose extreme enforcement difficulties.

The public comment received on this issue was generally favorable. In addition to the justification developed by NMFS, a number of fishermen felt the operation of buy-boats would adversely affect their land-based dealers. One commentator suggested that if buy-boats were permitted to operate with longliners, observers should be required at the expense of the vessel owner.

Several commentators at two Gulf hearings objected to this prohibition, because it would increase operating costs by requiring vessels to return to port after taking two fish. They further stated that vessels lacking refrigeration systems which stay at sea for over a week might suffer economic losses since Atlantic bluefin tuna spoil more quickly than other species, such as swordfish. NMFS recognizes that such a prohibition could cause negative impacts on a directed fishery. However, these incidental catch allowances are intended for vessels engaged in a directed fishery for other species, and presume that the economic characteristics of these operations are not based on the incidental catch of Atlantic bluefin tuna. The regulation prohibiting buy-boat activity in the longline fishery is adopted as proposed.

In addition, a number of editorial changes have been made to clarify the regulations and make them internally consistent. Several editorial oversights were discovered in the June 13, 1980, publication of the final regulations for the U.S. Atlantic bluefin tuna fishery. The correction to 285.1 is to clarify the definition of a fishing week. The changes to 285.23(c) correct an error which describes a reporting week as eight days.

Giant Atlantic bluefin tuna were taken in the Gulf of Mexico in December 1980, indicating the importance of amending the 1980 regulations in time to address the longline fishery which peaks in the period from February through April. Immediate implementation of the amendments will provide the basis for managing the catch of Atlantic bluefin tuna by the domestic longline fishery, and comply with the U.S. commitment to ICCAT. Further, there has already been

significant opportunity for public comment, and these final amendments do not differ significantly from the proposed regulations. Therefore, the Assistant Administrator finds that there is good cause to waive the 30-day delayed effectiveness period under the Administrative Procedure Act.

The Assistant Administrator for Fisheries has determined that these final changes to the regulations do not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Assessment has been prepared. Upon request to the Environmental Protection Agency, for reasons stated above, the 30-day review period of the Environmental Assessment has been waived. In addition, these changes have been deemed nonsignificant according to the criteria set forth in Executive Order (E.O.) 12044. Copies of the Environmental Assessment may be obtained by writing the agency official noted above.

Signed in Washington, D.C., this 21st day of January 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

(Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h)

Accordingly, 50 CFR Part 285 is amended as follows:

1. In § 285.1 four definitions are added in alphabetical order and read as follows:

§ 285.1 Definitions.

* * * * *

"Handline" or "handline gear" means fishing gear which is released by hand and consists of one main line of variable length to which is attached leaders and hooks, with the number of leaders and hooks not to exceed two. Handlines are retrieved only by hand, and not be mechanical means.

* * * * *

"Longline" or "Longline gear" means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or groundline of gangions and hooks numbering in excess of two. A longline may be retrieved by hand or mechanical means.

* * * * *

"Fishing week" means a period of time beginning at 0001 hours on Sunday, and ending at 2400 hours on the following Saturday.

* * * * *

"Reporting week" means a period of time beginning at 0001 hours on Sunday, and ending at 2400 hours the following Saturday.

* * * * *

2. In § 285.25 paragraphs (bb), (cc), and (dd) are added to read as follows:

§ 285.25 Prohibitions.

* * * * *

(bb) fish for, take, or catch giant Atlantic bluefin tuna with longline gear except as provided in § 285.31(d).

(cc) fish for, take, or catch giant Atlantic bluefin tuna with longline gear, or while having longline gear on board that vessel if the vessel is registered in the general category pursuant to § 285.2(b)(1).

(dd) purchase or transport with a buy-boat any Atlantic bluefin tuna captured incidentally by longlines.

* * * * *

3. In § 285.27 paragraph (a) is revised to read as follows:

§ 285.27 Penalties.

(a) Any person who violates paragraphs (a) through (s) inclusive, or paragraphs (bb) through (dd), inclusive, of § 285.25 shall be assessed a civil penalty of not more than $25,000; and for a subsequent violation shall be assessed a civil penalty of not more than $50,000.

* * * * *

4. In § 285.30 paragraph (d) is revised to read as follows:

§ 285.30 Quotas.

* * * * *

(d) *Incidental Catches.* Atlantic bluefin tuna taken incidentally shall be included in the quotas and subquotas of this section, except Atlantic bluefin tuna taken pursuant to § 285.31(d).

* * * * *

5. In § 285.31 paragraph (b) is revised and a new paragraph (d) is added as follows:

§ 285.31 Incidental catch.

* * * * *

(b) *Herring, mackerel, menhaden, and tuna (other than Atlantic bluefin tuna) purse seine vessel and vessels using fixed gear other than traps and longlines (pounds, weirs, and gill-nets).* Any person operating a vessel fishing principally for species of fish other than Atlantic bluefin tuna and possessing an Atlantic bluefin tuna certificate under § 285.21 may take, during any fishing trip, Atlantic bluefin tuna of any size class; *Provided,* That the amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish onboard the vessel at the end of the fishing trip.

* * * * *

(d) *Longlines.* Any person operating a vessel using longline gear and possessing an Atlantic bluefin tuna certificate under § 285.21 shall be permitted to land giant Atlantic bluefin tuna, as an incidental catch: *Provided,* That the amount of Atlantic bluefin tuna does not exceed:

(i) Two fish per vessel, per trip, south of 36°N. latitude, and

(ii) 2 percent by weight of all other fish on board at the end of the fishing trip, north of 36°N. latitude.

[FR Doc. 81-2886 Filed 1-21-81; 3:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 16
Monday, January 26, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 459

[Docket No. CAS-RM-81-127]

Residential Energy Efficiency Program; Proposed Rulemaking and Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy proposes to implement the Residential Energy Efficiency Program (REEP) pursuant to Subtitle C of Title V of the Energy Security Act. The purpose of the program is to demonstrate the feasibility of using private sector, profit-making firms or non-profit organizations to capture wasted energy through systematic retrofit (such as installing insulation) of existing residential buildings, and funding these retrofit activities from savings recognized by the utilities serving these residences. These savings can come both from the utilities' reduced need for new energy supplies and from the utilities' ability to delay or avoid the construction of expensive new capacity.

The REEP program is an experiment in residential retrofit delivery and finance. It is a voluntary program, under which States and local governments may apply to DOE, on a competitive basis, for grants to carry out demonstrations. While States or local governments are the only eligible applicants, each demonstration is intended to be a fully cooperative venture among State or local government, utilities, and the private sector companies involved.

In this proposed rulemaking, the Department defines the REEP concept in detail, and sets forth the minimum requirements for submission of proposed REEP plans.

DATES: Written comments must be received on or before March 27, 1981, 4:30 p.m., e.s.t. in order to ensure their consideration. A hearing will be held March 6, 1981, at 9:00 a.m.

ADDRESSES: Comments and requests to speak at the hearing should be addressed to Carol Snipes, Office of Conservation and Solar Energy, Department of Energy, Room 1F-085, 1000 Independence Avenue, S.W., Washington, D.C. 20585. See "Comment Procedures" under Supplementary Information below, Section VII.

Public hearing: The public hearing will be held in Room 2105, 2000 M Street, N.W., Washington, D.C. See Section VII below.

FOR FURTHER INFORMATION CONTACT:

Dan Quigley, Building Conservation Services Division, Department of Energy, Room GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9161

Daniel Ruge, Office of General Counsel, Room 6B-144, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9519

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

Energy conservation represents a readily available source of "new" energy in large quantities. To encourage more widespread conservation, the Department of Energy (DOE) provides incentives through a variety of programs including information programs (such as the Residential Conservation Service), and demonstration programs to eliminate the institutional and financial barriers which often confront conservation efforts. The Residential Energy Efficiency Program (REEP) is based on an approach to increasing energy conservation which complements existing programs: the energy saved through retrofitting existing residences represents a measurable commodity which utilities may "purchase" as they would any other energy source. Retrofit includes the installation of insulation, improvements to or replacement of existing heating and cooling equipment, and other energy conservation measures and techniques which improve upon the energy efficiency of existing residential buildings. The final regulation implementing the REEP will solicit proposals for demonstrations which apply the REEP concept (described below) in innovative and effective ways.

While the Energy Security Act (Pub. L. 96-294), Title V, Subpart C, requires that REEP be implemented by regulation, it is an entirely voluntary program which provides the opportunity for interested consortia of State or local government units and utilities and utility commissions, to receive both technical and financial assistance in the development and implementation of programs which demonstrate the efficacy of this method of retrofitting residences.

B. Objectives of the Program

The REEP is an experiment in residential retrofit delivery and finance. It is intended to demonstrate the feasibility of using private sector, profitmaking firms or non-profit organizations to systematically capture wasted energy through retrofit of buildings, and to sell that captured energy to utilities to offset the utilities' need for new energy supplies. There are three important objectives of the REEP. The single most important objective is to demonstrate the cost-effectiveness of investment in conservation from the point of view of the utility and the Energy Conservation Company (ECCO). The program is also intended to demonstrate the increased benefits that can result from making conservation a cooperative venture on the part of Government, utilities and the private sector together rather than an isolated undertaking by each group alone. Finally, the program is intended to test consumer response to a retrofit delivery and financing service that overcomes two of the most serious barriers to retrofit currently: high initial cost and lack of convenient delivery.

C. The REEP Concept

The theory behind the REEP concept is that conservation represents an economical source of energy that can actually help utilities meet current and future energy demand by making available currently wasted energy.

Moreover, the REEP concept envisions that the reclaiming of the currently wasted energy and subsequent "resale" of such energy to utilities can be a commercially profitable undertaking by private firms, with no need for the consumer to pay directly for the conservation services.

The basic operation of the REEP concept is as follows. First, a utility contracts with an ECCO to have the exclusive franchise within that utility's service area to be paid by the utility to capture as much wasted energy as possible in the residential buildings. All of the key issues pertinent to the operation of the program would be agreed upon in a contract between the utility and the ECCO, and would include: a determination of the value to the utility of the energy saved; the method for measuring the energy savings achieved and the length of time over which measurements would be made; the period of years over which the payments would be made; and the details concerning the type of inspection and installation to be made in each home covered by the contract.

According to the financing concept behind the REEP, the ECCO would produce sufficient revenues (through payments from the utility(ies) with whom it has contracted) to cover all its expenses (including the cost and installation of conservation measures). The ECCO itself might make a profit from the enterprise by earning more from the utility than its total expenses over the life of their contract.

The ECCO would undertake to promote its service to the homeowners and tenants in the area under contract. The ECCO would offer to inspect each dwelling and make a determination as to the measures which should be installed to save energy. The ECCO would itself provide the auditors to carry out the inspection phase of the program and would be responsible for scheduling and overseeing the second phase, the actual installation of measures. The installation work would be subcontracted by the ECCO to local contractors who have been notified earlier of the opportunity to participate in the program. The ECCO would also arrange for the purchase of the conservation measures which by virtue of the volume purchased would result in cheaper prices, although this may have possible anticompetitive effects. DOE is particularly interested in comments on this potential problem. The conservation measures recommended by the auditor and accepted by the homeowner/tenant would be installed systematically, on block-by-block basis, by the local contractors as noted earlier. The work would be done under the supervision of the ECCO in whose interest it would be to save the greatest amount of energy at the lowest possible cost. The ECCO would provide, finally, a written warranty covering materials and workmanship for a period of at least 1 year.

According to the terms of the contract between the ECCO and the utility(ies), the actual measurement of energy savings would then commence. The ECCO would receive payments from the utility based on these measurements. The number of years over which the ECCO would be paid and the amount per unit of energy saved would also be according to the terms of the original contract.

The role of the State or local government would be to enforce the terms of the contract through monitoring and normal judicial channels. In addition, the Government would provide an opportunity for consumer redress in the event that any complaints are lodged against the ECCO, the utility, or both, through consumer protection mechanisms established by the State and local government.

The benefit to the utility would occur as a result of acquiring an additional source of supply from the conservation activities performed by the ECCO. For gas utilities, the saved gas would provide a source of supply that could be resold to other customers, e.g., industrial customers. For all utilities, the savings would reduce the need for purchasing power or fuel, or would offset the need to invest in new or expanded facilities.

The uniqueness of the REEP concept lies in its emphasis on rewarding actual energy savings rather than number of products sold. Such an emphasis has the potential to ensure that the ECCO performs the most cost-effective improvements in each building, since their profit results from optimizing results over a long period of time, not from making one-time sales. Another characteristic of the REEP concept is that, by providing retrofit at no direct cost to the consumer, it is designed to overcome two of the most serious barriers that exist to greater retrofit activity: high first cost to the consumer and lack of convenient, trusted delivery. The REEP approach of providing for total market penetration of a given geographic area also allows for economies of scale in operation costs that would not be possible with individual investments made separately on a scattered basis at different times. Such cost minimization could enhance the potential for private sector profit and thus the overall feasibility of the program. By linking the marginal supply costs of the utilities (as represented in the price paid for saved energy) with the ECCO's decisions about how much to invest in each house, the REEP concept provides a motivation for investments in conservation which more closely matches that of society as a whole. Finally, the REEP approach places emphasis on the institutional cooperation that may be necessary to efficient, large-scale retrofit, bringing together the utility, the utility commission, state and/or local government, and private sector with each providing some critical element of the process and together creating a system of checks and balances that has the potential to increase consumer confidence and thereby consumer participation—the key to the program.

While the REEP concept offers some potential solutions to retrofit delivery and financing problems, it also has some potential drawbacks. One negative aspect of the concept is its sheer complexity, involving many different interests and organizations all having to agree upon complex and controversial issues such as energy price forecasts, accurate measurement methodology, and so on. The REEP approach also poses a potential threat to open market competition, because an ECCO would be able to offer goods and services at no cost to the consumer—an offer that no other traditional business would be able to match. Finally, there is a problem of ensuring equity for those who do not benefit from the program (such as consumers who have already retrofitted their residences) ensuring that they do not have to subsidize unfairly those who so benefit from the program. The demonstrations will help to explore these potential problem areas, and various means of remedying them.

D. The Demonstrations

The legislation authorizing the REEP demonstrations is intended to provide not only financial assistance to help offset the cost to the parties involved, but also a cooperative framework for ensuring that all the parties involved work together fully. One of the key elements introduced by the legislation is to assign certain responsibilities to each participant in a REEP demonstration. First, it makes a State or local government the only eligible applicant for financial assistance from the government for these demonstrations, although most of the parties involved in the demonstration must approve the application submitted by the State or local government before DOE can consider the application. In this way, the money available under the program is

received by a party with no financial interest, but with the responsibility to allocate the money in a manner agreed upon by the parties who will participate in the demonstration. The legislation also calls for the State or local government to be the developer of the measurement strategy to be used to measure energy savings, although again the strategy is to be agreed upon by all the participants. Finally, it is the responsibility of the State or local government to conduct the public hearing which is required in each area where a REEP deomostration is contemplated, to allow the public and all participants an opportunity to comment on the proposed demonstration.

The role of the Federal Government is to provide assistance, set guidelines for consistency, monitor progress of the demonstrations, and disseminate information.

The responsibility of the utility and a State regulatory authority (in the case of a regulated utility) is to calculate the value which it will assign to the units of energy saved. This value must be agreed to by the State or local Government as well as the Governor, however, to help ensure that the result is fair and reasonable. The utility is also charged with the responsibility of selecting the energy conservation company with which it will enter into a contract to retrofit within its service area or portion of its service area. The utility and the State regulatory authority are also responsible for negotiating the terms of the contract with the ECCO, including the measures to be installed and the inspection procedure to be used. The utility must also pay the ECCO for the saved energy achieved.

The legislation governing these demonstration also places emphasis on the safeguards needed to ensure that the demonstrations don't create an anticompetitive situation in the area where they take place. DOE itself is required by the legislation to report to the Congress on the effects on competition of the demonstrations.

The legislation authorizes up to $10,000,000 for no more than four REEP demonstrations, to be used to assist a State or local government to carry out an approved plan. One of the underlying issues of general concern in this proposed rule is the most effective and equitable distribution of funds. This is discussed more fully in the section-by-section review of the rule which follows. The Department seeks comments from all potential demonstration participants on this question.

E. DOE Support to Applicants

While it is clear that the REEP program provides financial assistance to the selected applicants (those whose plans are selected for implementation), if is the intent of the Department to also provide technical assistance to applicants as they develop their proposed plans, prior to submission. The technical assistance being considered includes guidelines for the development of an experimental design consistent with the REEP objectives. It is recognized that the proposal development is an intensive effort and several specific assistance measures are being considered, including: technical workshops; provision of consultative services to applicants; and planning grants. Since the legislation states that financial assistance may be provided to applicants" * * * to carry out any plan * * * if the plan is approved * * *", DOE may have to look to other legislative authority for providing planning grants. Comments on the most effective means of providing such assistance are solicited.

DOE also intends to hold a series of informal meetings with interested and affected parties to discuss problems and issues related to the REEP mechanisms, the plan preparation process, and so on. Further notice about these informal meetings will be given.

II. Discussion of the Proposed Rule

This section provides a general discussion of each section of the proposed regulation, including discussion of key problems and issues related to each. The discussion is intended to stimulate public comment on those topics that are especially critical to the successful implementation of the demonstration program.

A. Definitions

DOE proposes to incorporate several new definitions for this rulemaking (section 459.102), as distinct from some of the definitions used in the RCS regulation (10 CFR 456). These new definitions are required by the legislation which authorizes the REEP demonstrations.

DOE has defined the term "applicant" to mean any State or local government that submits a proposed REEP plan to the Department. A "State or local government" is understood to mean that any of the following may submit proposed plans: a Governor, a State Government agency, a local government agency, an elected or appointed local official, or a nonregulated utility which is an agency of a State or local government. This definition allows for a broad range of eligible applicants, including those who may not have any RCS-related responsibilities. DOE solicits comments on the completeness of this definition, or on any complications that may arise as the result of any of these applicants being a grantee under the program.

We are considering including the Tennessee Valley Authority (TVA) within the definition of "State or local government," since it performs a function similar to a State regulatory authority. In NECPA, the TVA is included within the definition of State regulatory authority. We seek comment on whether this inclusion of TVA as potential applicant would be desirable.

Similarly, the Bonneville Power Administration may deserve special consideration in the REEP demonstration. We seek comment on the role of the BPA.

The definition for the term "residential building" includes all residential buildings regardless of the number of individual units or the type of ownership. This definition also includes renter-occupied residential buildings of all types.

"Conservation measures" in this rulemaking are broadly defined to include all those measures cited under the RCS regulation (10 CFR 456) as well as any additional measures that have demonstrated energy saving effectiveness. The particular measures included in any demonstration are to be decided by the applicants. We point out that this definition may include solar and load management devices.

B. Functions of the Energy Conservation Company

Section 459.103 describes the essential functions in the demonstrations: inspection and retrofit of residential buildings. This section also notes who is eligible for those services. Specifically, this section describes the services which the energy conservation company (ECCO) must offer to all the owners and tenants in the designated program area.

One of the issues of concern that is immediately apparent in the definition of service coverage is what provisions, if any, can be made for oil heated homes. Savings of oil are not of any value to gas and electric utilities, and thus there may not be incentive for retrofits in this portion of the building stock. Of course, if a home which is oil-heated also uses substantial amounts of electricity or gas for other purposes, such as water heating or air conditioning, then an ECCO would have an incentive to provide some services to this home.

One of the attractions of the REEP concept is the economies of scale which

would occur from retrofit of entire blocks of homes at once. If a significant fraction of the homes in a program area are oil-heated, these economies of scale may be reduced. A significant opportunity for retrofitting oil-heated homes would also be missed. In any event, DOE will take into account the treatment of oil-heated homes as we estimate the energy saving potential of each proposed REEP plan. DOE seeks comment from the public on possible ways of including oil heated homes that do not create unacceptable burdens for the gas or electric utilities, their customers or the ECCO's.

Section 459.103 covers the three basic services each ECCO must offer: inspection; supply and installation; and warranty of material and workmanship. The first service, inspection, must include an actual audit of each building, accompanied by information given to the owner or occupant as to the measures that would be installed and the financial savings that would result from the installation. In addition, the ECCO must give to the owner or occupant information concerning energy saving practices that could be employed in the building without installing anything, and potential savings that could result from these practices.

The central issues related to the inspection is which measures should be included on the inspection "list" and who should determine which measures to install in any given building. The conference report which accompanies the legislation makes clear that the "list" of measures considered by an ECCO during home inspection under the REEP program does not have to be identical to DOE's Residential Conservation Service list, developed for the national conservation information program (10 CFR 456, 44 FR November 7, 1979) which is to begin in 1981. As proposed, the regulations provide applicants for the REEP demonstration with the opportunity to devise whatever list of measures they feel is appropriate for the market being served by the demonstration. Justification for the measures chosen by applicants must be submitted in the application, however, as DOE will be considering the overall energy saving potential of each proposed plan as a final selection factor. There are obviously many measures which might be included in an ECCO's list, as well as many possible combinations or "packages" of measures. The concern is to ensure that the measures represent the most cost effective and energy efficient measures available, and that the most complete retrofits are performed.

The supply and installation of the measures is to be coordinated by the ECCO. Although the legislation does not specifically state it, it is assumed that the actual work of the installations is to be carried out by local contractors working under subcontract to the ECCO. The main reason for this requirement is that the 'fair and open' competition cited frequently by the legislation could probably only be achieved under a system which channels work to local businesses rather than supplanting them. DOE solicits comments on retaining this requirement for the use of local contractors.

The last paragraph of section 459.103 states that each ECCO must offer a written warranty to each customer in the program area who has measures installed, guaranteeing the material and workmanship for a minimum period of 1 year.

C. Contract Provisions

Section 456.104 describes what the contract between each utility and ECCO must contain. The contract itself is the critical document in the demonstration, specifying the terms of the financial and functional relationship between the two key partners, the utility and the private company. There are several very important issues associated with the terms of the contract, each of which is discussed individually below.

Paragraph (a) requires that the utility and the ECCO agree upon a geographic area which is where the demonstration will be carried out.

Paragraph (b) calls for the explicit statement within the contract of the services that the ECCO will provide to the utility customers in the program area. These services are to include, at a minimum, the inspection of the building, the supply and installation of measures, and the provision of warranties for material and workmanship.

Paragraph (c) deals with the measurement of energy savings achieved as a result of the program. The law requires that the State or local government official submitting the REEP application to DOE be the one responsible for developing the measurement procedure and its precise terms. Presumably the measurement procedure would take into account the period of time over which the measurements would be made; the control for weather variations affecting energy consumption; and changes in occupancy, etc., which could affect consumption levels. In addition, the procedure for measuring might take into account the need for a control group, either matched or aggregate (or both), against which to test the savings of the retrofitted group. DOE believes that the financial interests of the two parties to the contract—the utility and the private company—will dictate agreement on the use of proper weather data, control groups, etc., in the measurement method prescribed by the State or local government.

DOE plans to provide substantial technical assistance to the demonstration sites in development of the measurement plans. Though the measurement plan is complex and central to the success of the program, our analysis to date shows that proper statistical sampling procedures can produce measurements which accurately reflect the savings achieved by the ECCO.

Paragraph (d) calls for the specification of the price which the utility will pay the ECCO per unit of energy saved by the ECCO. This is potentially the most complicated and the most controversial of all the contract provisions. The actual value to the utility of energy saved will vary greatly from one utility to another, depending upon the current average costs of fuel, the marginal cost of new capacity, the peak load requirements of the utility, and the time of day the energy is used and so on. In order to give utilities and public utility commissions flexibility in devising financing schemes to optimize conservation investments, this key aspect of the contract has been left open in the proposed rule. As the Department is concerned with demonstrating the profitability of conservation investment and identifying the incentives necessary to make the investments, it wishes to encourage innovative price structuring as fully as possible.

Paragraph (e) addresses the explicit terms of payment by the utility to the ECCO, based on the measurement procedure and values which have been agreed upon. It should be noted here that the period of time over which actual measurements are made does not have to be the same as the period of time over which payments to the ECCO are made. It is expected that payments would be made over a longer period of time, taking into account the fact that the benefits from the conservation investments would accrue to the utility over a period of several years, perhaps for as long as 15–20 years. Nothing has been prescribed in the proposed regulation about the number of years or the frequency of payment that would be appropriate.

Paragraph (f) calls for the contract to specify the measures and techniques the ECCO will consider during inspections of residences, and how the ECCO will

determine which measures to install in any given residence.

Paragraph (g) calls for the inclusion of any applicable Federal standards for materials and installation.

Paragraph (h) refers to the requirements for the ECCO to subcontract with local contractors for the retrofit installations performed under the demonstration. This subcontracting requirement is the minimum competition safeguard specified; other procedures for protecting competition are also to be contained in the contract and will be considered by DOE in its selection process under section 459.109.

Paragraph (i) states the statutory requirement that the State regulatory authority, in the case of a regulated utility, approve the contract and all its provisions before the contract can become effective. This has the effect of making the regulatory authority a full partner in the contract negotiations between the utility, the ECCO, and the State or local government unit which submits the REEP application to DOE.

Paragraph (j) stipulates that the contract specify any other requirements or restrictions to be placed on any of the parties to the contract.

D. Contents of Proposed REEP Plans

Section 459.105 describes what must be contained in the Plan that is submitted to DOE by a State or local government requesting funding for a REEP demonstration. The Plan is a presentation of the overall strategy for carrying out the demonstration, including:

—the contract provisions;

—the designation of responsibilities of all the parties involved in the demonstration;

—the documentation of the public process by which the Plan itself was developed (i.e., the public hearing record).

Implicit in all the Plan requirements is a question of timing: Are all the Plan requirements to be completed action at the time the Plan is submitted to DOE? For example, does the contract between the utility and the ECCO have to be signed prior to submission of the Plan to DOE? The Department has tentatively taken the position in these proposed rules that the Plan must describe the proposed terms of the contract, and include a copy of the solicitation for the ECCO. The Plan must also show the schedule by which the terms of the contract (and the other actions) will be completed.

Each Plan must include a detailed description of the market to be served by a demonstration. This is to help DOE in selecting an adequate range of demonstration sites, as well as to establish a basis for adequate market assessment on the part of the REEP participants themselves.

Paragraph (d) calls for an objective description of the utility(ies) which will be participating in the demonstration, including the number and type of customers affected.

Paragraph (e) requires the Plan to include a copy of the "request for proposals" or solicitation the utility will use to seek ECCO's interested in entering into a contract with the utility to perform the inspections and retrofits. One specific requirement that appears here is the statutory requirement for a "fair, open and nondiscriminatory" process for choosing the ECCO. The section also contains requirements that small and minority-owned businesses be given adequate notice of, and opportunity to participate in, the proposed demosntration. DOE expects that the selection of the ECCO will result from the public notice included in the Plan. We seek comment on whether it is reasonable to expect this solicitation to be finished in time to be part of the Plan application.

Paragraph (f) contains two specific additions to the basic requirements of the contract between the utility and the ECCO which are given in section 459.104. The two additions are the possible additional REEP-related activities that would be contracted for by the utility, as well as the enforcement activities which the State or local government shall undertake to enforce such contract. Additional activities for which the utility might contract include special marketing and outreach activities; post-installation inspections one year after the retrofits are made; and so on. The enforcement actions on the part of the State or local government are not specified in the proposed rule except for the requirement for a semi-annual review to be conducted by the State or local government of the progress of the demonstration.

Paragraph (g) of the Plan content requirement calls for a detailed description of the way in which the price to be paid the ECCO will be determined. As noted earlier in this discussion (section 456.104) this is the single most critical component of the REEP process. The value assigned by the utility (with its public utility commission) to the energy that is saved through retrofit in its service area, is the key that will determine the feasibility of the program.

DOE recognizes that this determination is best left up to the demonstration participants. However, the conference report accompanying the law states that the Congress intended that the value associated with any deferral in expansion, production or distribution may be included in the definition of the value to the utility of the energy saved. The proposed rule as written does not define avoided costs in any precise terms, and leaves this determination to the individual demonstration applicants. It is assumed that since the demonstration Plan submitted to DOE by the State or local government must contain a definition of the value of energy saved which is acceptable to all parties, a fair and reasonable determination will be made.

An issue here is related to the legal requirement that the services of the ECCO be offered to the owner/occupant "without charge." Does this requirement prohibit only direct charges, but allow indirect charges? It is possible that utilities would need to recover part of their costs of the program in the form of a special consumer conservation charge-back, i.e., an incremental fee added to the customer's regular monthly fuel bill. Another alternative would be to create a separate class of ratepayers who do pay different rates based on the conservation investment and reduced consumption requirements they are benefitting from. Both of these alternatives might substantially reduce the participation rates among residential customers. This issue is also crucial for resolution of the equity problem between customers who have already retrofitted at their own expense versus those who will be completely subsidized for their retrofit. It is crucial also for resolution of utility cost accounting for the REEP-related payments utilities make. The porposed rule does not prohibit an indirect charge to the customers benefitting from the program, and indirect charges have not been explicity treated in the proposed rule. DOE is very concerned that, in each demonstration, consumers be informed of any costs that will be involved with the demonstrations, however, and full disclosure of such information will be a factor in evaluating the fair and open competition provision of proposed plans.

Paragraph (h) of the Plan, like the previous paragraph concerning the value of saved energy, refers directly to one of the contract items: the measurement procedure for calculating savings. There are four basic plan requirements for the measurement of actual energy savings resulting from the ECCO's retrofit work. First, it must be specified over what period of time the savings will be measured. Second, the total number of measurements must be specified as well

as the intervals at which the measurements will be taken. For example, there may be one actual meter reading taken of the demonstration homes once every 3 months for 3 years. In addition, the plan must specify who shall have the responsibility for conducting and recording the measurements. For a detailed discussion of the Department's concerns relative to the measurement procedure, see the discussion under section 459.104.

Paragraph (i) prescribes what procedures must be included in the Plan for selecting the measures to be installed in the residences. As noted earlier, the decision about what measures are installed in each house under the demonstration has been left entirely to the applicants. It is assumed the applicants will refer to the list of measures that has been developed by DOE for the national Residential Conservation Service Program, as these measures have proven energy saving value, and have established standards of quality. However, it is not necessary for a demonstration to include all the RCS measures in its program, and it may choose to add measures. DOE is requiring that the plans submitted merely describe the list of measures which will be considered by each ECCO in each home audited. It is expected that the list of measures which the building inspection considers will be greater than the number of measures actually installed, however.

Applicants should keep in mind that the number of measures which are included in the program is one factor which will affect the amount of energy which a particular plan is likely to save.

In keeping with the Department's concern for assuring the quality and reliability of materials installed under this program, a requirement has been added in paragraph (j) that all measures installed in demonstration homes meet any applicable standards for materials and installed which were promulgated under the final rule for the Residential Conservation Service.

The legislation establishing the REEP demonstration expressed special concern for the possible anticompetitive effects of one ECCO having an exclusive contract with a utility or utilities in a given geographical area. In effect, such a contract means that one decion-maker or consumer, the ECCO, is substituted for many thousand decision makers in the marketplace with the potential for directing a great deal of capital to one or a few sources only. Obviously, it would be difficult for other retrofit and insulation firms to compete with the ECCO which is able to offer retrofit at no cost to the owner/occupant. One partial remedy (not required by the legislation) is for the ECCO itself to subcontract the retrofit work to local contractors.

Subsection (k) contains the requirements we proposed to reduce the effect of the ECCO's activities on competition in the market for installation services. These proposed requirements provide that the ECCO must subcontract all installation of energy conservation measures. They also establish certain restrictions on how they may select the subcontractors. The goals of those requirements, are first, to prevent any one existing local contactor from having an unreasonable share of the business in the program area, and second, to provide reasonable access for new firms to these markets. DOE seeks comments on these proposed requirements and suggestions about others that may be necessary. We request that commenters consider the following questions in their responses:

—To what extent will these requirements dampen the interest of ECCO's in bidding on the utility contract? Can the vague terms "reasonable" and "unreasonable" (used in the proposed rule) be more clearly defined?

—Will the ECCO's activities be likely to set fixed prices for installation services? If so, should provisions be added to reduce this effect?

—Are there any circumstances in which the ECCO should be allowed to install measures itself, rather then through subcontractor? For example, it may be cheapest for the ECCO to install directly, some low-cost measures (e.g., caulking, weatherstripping, water heater insulation, etc.) during the inspection of the house. But this might adversely affect any firms now offering installation of these measures. What is the best resolution of this conflict?

A similarly difficult problem is the potential effect of the demonstration on the competitive balance among particular brands or types of particular measures. For example, in the demonstration area, there may be serveral brands of clock thermostats which are available and commonly purchased. In an attempt to get the best price, the ECCO may accept bids for bulk purchases and select a single brand for the entire demonstration area. Though this procedure may reduce costs, if it were used in a widespread implementation or REEP, the number of brands (and manufacturers) of clock thermostats might be substantially reduced.

The best solutions to these problems are not readily apparent and will require careful analysis. DOE intends to consult during the comment period with the Federal Trade Commission, the Department of Justice and the Small Business Administration in developing the final program regulations. We seek suggestions for reducing the potential adverse effect of REEP on competition.

Subsection (l) addresses consumer grievance procedures, by requiring the plan submitted to DOE to describe how the demonstration will resolve any complaints. It is assumed that the existing State or local consumre protection mechanisms in each geographical area will be sufficient to satisfy this requirement, and such mechansims need be only briefly described.

Subsection (m), which requires an explanation of how utility REEP payments to ECCO's shall be recovered, has been added by the Department. We do not intend to require a particular method of cost recovery in the final regulations. This issue is solely for the determination of the utility and its State regulatory authority (where appropriate). However, the method chosen will greatly affect the motivation of the utility to make the demonstration successful.

Subsection (n) calls for the plan to contain a time schedule for the demonstration, including the key milestones for signing the contract, initiating measurements of energy savings. No deadlines have been establisehd for the completion of these activities. For purposes of information DOE would like to receive comments on the amount of time that would be required to complete the various steps in the demonstration. We believe that it may take between 6–18 months to set up for the actual inspections and installations.

E. Financial Assistance To Be Made Available

Section 456.106 describes the financial assistance, in the form of grants, which DOE may provide for REEP demonstrations. The most important aspect of this section is that it excludes purchase and installation of materials from eligibility for Federal financial support. The intent of this exclusion is to avoid giving the impression that the REEP is a demonstration of a new subsidy program from the Federal Government to homeowners. DOE will make funds available for the pre-implementation work that will be required to organize each demonstration. DOE also intends that such funds be available to all participating parties in a REEP project, through the State or local government, to the utility, the regulatory authority, and

the energy conservation company. Such preliminary work might include contract negotiations requiring an attorney, market assessment to determine an appropriate program area, and so on. Except for purchase and installation of measures, demonstration funds are also intended to help underwrite actual program activities. The purpose of this funding is to share the risks and added costs associated with first time demonstrations of this concept. DOE seeks comments on whether other demonstration costs ought to be excluded from the DOE funding, in the interest of having a valid test of the commercial viability of the REEP.

F. Application Procedures

Section 459.107 covers the application procedures for the REEP demonstrations. It is clear from the requirements of the legislation that although State and local governments are the only ones eligible to submit applications to DEO, all the details of the application must reflect the consensus of the utility, the State and/or local government, the private company (if a contract has been negotiated) and the State regulatory authority. Thus, it is the intention of the program to require cooperation between all parties involved in the demonstration. The remainder of the section describes when the applications are due and who approve the REEP application before it is submitted.

DOE solicits comments from the public on the amount of time that would be reasonable to expect both for preparation of applications and for implementation of the actual retrofit services once awards have been made. The proposed rule suggests a 6-month period for the preparation of proposed plans, with the assumption that this period of time could be the minimum needed to fulfill the Plan requirements and have the demonstration ready to implement. Commentors should address whether this assumption and the 6-month time period are appropriate, however, as well as suggest a maximum preparation time that should be allowed.

The statutory requirement for a public hearing is repeated in paragraph (d). It is the responsibility of the State or local government applying to conduct the public hearing, and to consider incorporating the results of the hearing in its Plan.

G. Application Contents

Section 459.108 lists the items that must be included in the formal applications to DOE for REEP funding. DOE has not added any provisions to this section beyond those required by law. The basic elements of the application are the Plan, the hearing record, the completed financial assistance forms, and the written approvals stipulated in section 459.109.

H. Selection Criteria

Section 459.109 sets forth the criteria which the Assistant Secretary will use in approving and selecting REEP applications. As required by law, the Assistant Secretary can select no more than four REEP demonstration sites. The threshhold requirements for approval are those listed in the preceding section. Beyond these, the Secretary will take into account criteria which reflect the goals of the overall program; that is, to save substantial amounts of energy in a commercially profitable manner, without adversely affecting competition. To meet these goals, the regulation lists criteria which pertain to the adequacy of the demonstration design, such as the need for geographic diversity, organizational diversity, and client diversity.

Other factors that will be taken into account are the energy savings potentially indicated by the proposal plan, the likelihood that the costs and benefits of the program, for the utility, will be appropriately balanced, and the selection of conservation measures. The degree to which applicants have tried to reduce anticompetitive features of the demonstration will also be a factor in making final selection.

DOE is concerned about the inclusion of both multifamily, rental, and low-income residences in these demonstrations. Although specific requirements for including these categories of residences have not been proposed, applicants should be aware that these residences may have higher-than-average energy conserving potential, and thus may contribute significantly to the overall energy saving potential which will be assessed by DOE in approving proposed plans. In particular, DOE is looking in to ways for the inclusion of low-income residences to be enhanced by Weatherization Assistance Program funds. It may be possible for local agencies to make funds available for the purchase and installation of measures under a REEP demonstration.

Paragraph (b) of section 459.109 lists the criteria for approving financial assistance under the program. These include the completeness of the financial information submitted, as well as the degree of Federal financial assistance that is requested and the merits of the request. The Department is also concerned about justifications for funding assistance in areas where no activity could otherwise take place.

I. Revocation of Approval and Financial Assistance

Section 459.110 States the criteria which will be used to revoke approval and financial assistance for any plan or demonstration. Three of these criteria, which are specified in the law, relate to the problem of maintaining competition.

The problem of competition is, potentially, one of the most serious drawbacks to the REEP program. Because DOE does not have sufficient information at this time, it must rely upon the public comments elicited by this proposed rule; the public hearings required in the formulation of each proposed Plan; the reports required of the grantees; and the revocation safeguards provided by this section, to raise and resolve concerns in this area. The Federal Trade Commission is also charged in the legislation with responsibility for consulting with DOE on competition issues, and for making revocation decisions with the Department.

The Department also reserves the right in this section to revoke approval and financial assistance in any case where the demonstration requirements are not being adequately implemented. This might include failure of the ECCO to deliver services; failure of the utility to agree upon a value of saved energy, etc. In any revocation proceeding, the State or local Government that is the grantee shall be entitled to appropriate notice of the intent to revoke, and to a hearing on the Departmet's reasons for revocation.

J. Relationship to RCS Program and Other Provisions

The final section of the proposed rule, section 459.111, covers two miscellaneous areas related to the program, including: the relationship of the REEP demonstrations to the RCS program; and the procedure for amending Plans.

Section 459.111 exempts the participating utility from some of the requirements of the RCS programs. The RCS requirements are those for information (program announcements), auditing, arranging of financing and installation of measures and distribution of lists of contractors and lenders. This exemption, which is based on a provision of ESA, is available if the contract between the utility and the ECCO requires "equivalent" services to be provided to customers in the program area. It is up to the Assistant Secretary to decide whether a particular contract

requirement is equivalent to the RCS services or not.

We have two goals which we would like to achieve in deciding what REEP services are equivalent to the RCS. The first goal is encourage utility participation in the REEP demonstration by reducing their obligations under RCS. The second goal, which may conflict with the first, is to assure that utiliy customers receive at a minimum the level of services which is guaranteed to them by the National Energy Conservation Policy Act and the RCS. In most parts of the country, the RCS will have been underway for at least 1 year by the time the plans for REEP demonstrations are approved. Most utility customers will have received an unconditional offer of RCS Services. However, announcements for RCS services are to continue through 1985, and services must be available to customers indefinitely.

In light of these two goals, there are several ways which we could interpret equivalent between REEP and RCS. Three examples are decribed below. We seek comment on these examples and suggestions for other solutions. Also, we seek comment on when the determination of equivalence should be made: whether on a case-by-case basis as plans are approved, or through general rules specified in the final regulations.

The three examples are as follows:

(1) DOE could estimate the energy savings likely to be achieved by each REEP demonstration. If the savings from the REEP demonstration were estimated to be the same or greater than those likely to be achieved by the RCS, the utility would be exempted from providing RCS services to the program area starting from the approval date of the plan and extending indefinitely.

(2) Regardless of the particular measures or services offered to customers by the ECCO, the utility would be exepted from all RCS services from the time the plan is approved until some specific future time for the demonstration program area. This future time could be when all inspections of homes in the program area are completed, or when installation of the REEP measures is completed.

(3) Each service offered by the ECCO would be compared with those required by the RCS, utilities would be exempted from RCS requirements on a measure-by-measure and service-by-service basis. For example, if the ECCO did not offer inspections and installations for solar equipment, the utility would be required to offer auditing and arranging services for solar equipment (if solar measures were required RCS measures for that utility).

K. Exemption From FERC Regulations

The ESA provides an opportunity to seek transportation and price exemptions from the Federal Energy Regulatory Commission (FERC) for natural gas recovered through a REEP demonstration. The legislation gives FERC discretionary authority to grant such exemption, the effect of which would be to permit the utility to transport and sell the surplus gas. These exemptions (from certain provisions of the Natural Gas Act and the Natural Gas Policy Act) would allow a gas utility to sell the amount of gas saved by the ECCO in homes in the demonstration program area to the customer willing to pay the highest price. An exemption from FERC would be sought and negotiated individually by each participating utility pursuant to FERC's procedures. For further information regarding exemptions available for REEP demonstrations, participants can contact Robert C. Platt, Assistant Advisory Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8457.

III. Regulatory Analysis and Urban and Community Impact Assessment

Because the proposed rule affects only the possible implementation of a maximum of four demonstrations, it will not have a major economic impact. Therefore, a Regulatory Analysis required for major impact programs under E.O. 12044 is not required. Similarly, an Urban and Community Impact Assessment is not necessary as this is a voluntary program which is not a major policy or program initiative as defined in OMB Circular A–116.

IV. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service Program. A notice of availability of the final Environmental Impact Statement was published in the **Federal Register** on November 7, 1979, (44 FR 64602).

DOE expects that the REEP will involve generally the same measures as are contained in the RCS program (EIS) cited above, thus, the pertinent issues relating to NEPA have been addressed in the EIS for that program. If a measure is proposed by an applicant which is not covered under the EIS for the RCS program, DOE reserves the right to determine whether additional NEPA review would be required. Moreover, DOE expects that the limited number of projects under this program will not result in significant environmental impacts.

V. Consultation With Other Federal Agencies

In preparing this Proposed Rule, DOE consulted with representatives of the Federal Energy Regulatory Commission.

VI. Contractor Contributions to This Rulemaking

There have been no contractor contributions to this rulemaking.

VII. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposed procedures, requirements and criteria. Comments should be submitted to the address indicated in the addresses section on this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Energy Efficiency Program, (Docket No. CAS–RM–81–127)." Fifteen copies should be submitted. All written comments must be received on or before March 27, 1981, 5:00 p.m. e.s.t., to ensure consideration.

Pursuant to the provisions of 10 CFR 1004.11, any persons submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete written copy from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Hearing Request Procedure

The time and place of the public hearing are indicated in the date and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a group of class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before February 17, 1981, and may be hand-delivered to such address, between the hours of 9:00 a.m., and 4:30 p.m. A request should be

labeled both on the document and on the envelope.

The persons making the request should briefly describe the interest concerned; if appropriate, state why he or she is a proper representative of a group or class of persons that has such interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

DOE will notify each person selected to appear at the hearings before February 23, 1981. Each person selected to be heard should bring 15 copies of his or her statement to the hearing location.

C. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing, and there will be no cross-examination. At the conclusion of all initial oral statements, each person who has made an oral statement will, if time permits, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be asked.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, between the hours of 8:00 a.m., and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations, by establishing Part 459 as set forth below.

Issued in Washington, D.C., January 19, 1981.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

10 CFR is amended by adding a new Part 459 entitled "Residential Energy Efficiency Program" to read as follows:

PART 459—RESIDENTIAL ENERGY EFFICIENCY PROGRAM

Sec.

Authority: Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3203 *et seq.*, as amended by Subtitle C of title V of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611 *et seq.;* Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 *et seq.*, 42 U.S.C. 7101 *et seq.*

§ 459.101 Purpose and scope.

This part contains regulations to implement Subtitle C of Title V of the Energy Security Act, Public Law 96–294. It is the purpose of this part to encourage planning and implementation of residential energy efficiency demonstrations to make energy conservation measures available without charge to residential building owners and tenants in a manner which provides net benefit for consumers, utilities, and energy conservation companies.

§ 459.102 Definitions.

For purposes of this part—

(a) The term "Assistant Secretary" means the Assistant Secretary for Conservation and Solar Energy of the U.S. Department of Energy.

(b) The term "applicant" means the State or local government agency or official submitting a proposed plan for a Residential Energy Efficiency Program (REEP) to the Department of Energy. An applicant may be—a Governor, any State agency, any local agency, a local official, or a nonregulated utility which is an agency of a State or local Government.

(c) The term "contract" means the written contract between a utility or utilities and an Energy Conservation Company which specifies all the terms of obligation between them regarding the REEP demonstration.

(d) The term "conservation measure" means any item with demonstrated energy saving effectiveness. This term includes but is not limited to the measures defined as energy conservation measures and renewable resource measures contained in 10 CFR Part 456.

(e) The term "program area" means that geographical portion of a utility service area which is designated as the site for the REEP demonstration.

(f) The term "residential building" means any building used for residence, regardless of the number of individual dwelling units, which is not a new building to which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act (P.L. 94–385) apply and which has a system for heating, cooling, or both.

(g) The term "Energy Conservation Company" (ECCO) means the person or persons entering into a contract with a utility to perform the services prescribed by the contract.

§ 459.103 What the Energy Conservation Company must do for the customers.

(a) *Which customers.* The ECCO must offer its services to the owner or occupant of each residential building in the program area which is served by a utility to which the ECCO is under contract.

(b) *Inspections.* The ECCO must offer and upon request, provide, without charge, an inspection of each building to determine and inform the owner or occupant of—

(1) The energy conservation measures which will be supplied and installed in such residential building pursuant to paragraph (c);

(2) The savings in energy costs that are likely to result from the installation of such energy conservation measures;

(3) Suggestions of energy conservation practices including adjustments in energy use patterns and modifications in household activities, which can be used by the owner or occupant of the building to save energy and which do not require the installation of energy conservation measures; and

(4) The savings in energy costs that are likely to result from the adoption of such suggested energy conservation practices.

(c) *Supply and installation.* The ECCO must offer and, upon the approval of the owner of the residential building, provide, without charge, the supply and installation in such building of the energy conservation measures which the owner or occupant was informed (in the

inspection performed under paragraph (b)) would be supplied and installed; and

(d) *Warranty.* The ECCO must provide, without charge, a written warranty that at a minimum any defect in materials, manufacture, design, or installation of any energy conservation measures supplied and installed pursuant to paragraph (c), found not later than one year after the date of installation, will be remedied without charge and within a reasonable period of time.

§ 459.104 What the contract between each utility and the Energy Conservation Company must contain.

(a) *Program area.* The contract shall designate the geographic area in which the Energy Conservation Company will offer and provide services.

(b) *Services for customers.* The contract shall require the ECCO to offer and provide services to each of the utility's customers in the program area. These services shall be at least those described in § 459.103.

(c) *Measurement of energy savings.* The contract shall define a procedure for determining how much energy was saved in the program area as a result of the services provided by the Energy Conservation Company. The contract shall specify who shall carry out this procedure and how that person shall be paid. The contract shall specify the period over which the procedure is to be carried out.

(d) *Price for saved energy.* The contract shall specify the price which the utility shall pay the ECCO for each unit of energy saved as a result of the services provided by the Energy Conservation Company. The contract may provide for the price per unit to vary depending on the quantity of energy saved. For example, the price might be 10¢ per unit for the first 1000 units and 20¢ per unit for all additional amounts.

(e) *Payments by the utility.* The contract shall require the utility to pay the ECCO for the quantity of energy saved, as measured by the procedure in subsection (c) above, at the price specified by subsection (d) above. The contract shall specify the period over which these payments shall be made and their frequency.

(f) *Conservation measures and techniques.* The contract shall list the conservation measures and techniques which the ECCO must consider in its inspection and shall describe how it is to be determined which measures shall be supplied and installed for each customer.

(g) *Standards for materials and installation.* The contract shall require that any measures installed according to § 459.103(c) shall meet any applicable standards for materials and installation set forth in Subparts G, H, and I of CFR Part 456 (the Residential Conservation Service program regulations).

(h) *Competition in supply and installation of measures.* The contract shall describe the procedures to be followed by the ECCO to reduce any adverse effects of the contract on competition. At a minimum, this shall include a requirement that the ECCO shall subcontract with local contractors to perform the retrofit installations.

(i) *State regulatory authority approval.* If the utility is a regulated utility, then the contract shall require that its provisions are not effective until the State regulatory authority approves the provisions established according to this section.

(j) *Other contract provisions.* The contract shall specify such other requirements or restrictions to be placed upon one or more of the parties to the contract.

§ 459.105 What the plan must contain.

(a) *Purpose of this Section.* This section sets the minimum contents of a plan for the demonstration of the Residential Energy Efficiency Program. § 459.108 below says that the Assistant Secretary may not approve a proposed plan unless it contains the items described in this section. Once a plan is approved, it will serve as the guideline for how each of the parties named in the plan must act. These parties include, at least, the participating utilities, the State or local government submitting the plan, the Energy Conservation Companies, and the State regulatory authority (where appropriate). The plan itself is not a legally binding agreement on these parties. However, if a party named in the plan fails to carry out its assigned role, the Assistant Secretary may revoke approval of the plan and may terminate financial assistance. § 459.110 below also requires the Assistant Secretary to revoke approval and terminate financial assistance if the plan has certain adverse effects on competition.

(b) *Program area.* The plan must specify the geographic area in which the demonstration will be carried out.

(c) *Demographic and occupant characteristics.* The plan must describe the following characteristics of the housing in the program area—

(1) The number of housing units in each of the categories "single family," and "multifamily";

(2) What fraction of each category is owner-occupied and what fraction is renter-occupied; and

(3) The approximate average income of the occupants of each category.

(d) *Utility characteristics.*

(1) The plan shall name the utilities which shall participate in the demonstration (referred to here as "participating utilities").

(2) The plan shall list the number of customers served in the program area by each participating utility. These numbers shall be shown by the housing categories mentioned in paragraph (c)(1), and by a least these categories of services: "space heating," "airconditioning," "space heating and airconditioning," and "other".

(e) *Selection of an Energy Conservation Company.* The plan shall specify the procedure which the participating utilities shall use to select an Energy Conservation Company to perform the services described in § 459.103, including a copy of the solicitation inviting ECCO's to participate. This procedure shall be fair, open, and nondiscriminatory. The plan shall require that the ECCO not be an affiliate or a subsidiary of the utility, nor under the control of the utility. This procedure shall include adequate opportunity for small and minority-owned businesses to bid for the contract.

(f) *The contract between the utilities and the Energy Conservation Company.*

(1) The plan shall provide for the participating utilities to sign a contract with the Energy Conservation Company selected according to paragraph (e). This contract must contain at least the requirements of § 459.104.

(2) The plan must provide for monitoring and enforcement of the contract. This enforcement shall include at least a review every six months, by the State or local government which submitted the plan, of the activities of the participating utilities, the Energy Conservation Company, and any other parties to the contract. The purpose of this review shall be to assure that the provisions of the contract are being carried out.

(g) *The value of saved energy.*

(1) The plan shall require that the price which the utility pays for saved energy (according to § 459.104 (d)) shall be based on the value to the utility of the energy saved. The plan shall describe how the price is related to the value of saved energy.

(2) The plan shall describe the method which the utility shall use to determine the value of saved energy. This description shall contain at least the following elements—

(i) The time period over which the value of saved energy is calculated; and

(ii) For participating electric utilities, the portions of the value of saved energy which are the result of savings in capital costs, of savings in energy purchase costs, and of savings in other operating costs;

(h) *Measurement of energy savings.*

(1) The plan shall describe the procedure by which the energy savings which result from the activities of the Energy Conservation Company in the program area shall be measured. This description shall contain at least the following elements—

(i) The time period over which the saving shall be measured;

(ii) How often the measurements shall be made; and

(iii) Who shall conduct the measurements.

(2) The plan shall require the measurement procedure referred to in § 459.104(c) to be the same as the procedure described in paragraph (1).

(i) *What is installed in each house.*

(1) The plan shall describe how the measures which the Energy Conservation Company offers to each customer according to § 459.103(b) shall be determined. This description shall include at least the following elements—

(i) The list of energy conservation measures which the Energy Conservation Company may consider in the inspection conducted pursuant to § 459.103(b); and

(ii) The measures which the Energy Conservation Company must consider or install, if any, and those which it may not consider or install, if any.

(2) The plan shall describe what degree of latitude the Energy Conservation Company shall have in the contract with the participating utility to decide which measures to inspect for and to offer to install.

(3) The plan shall describe what aspects of the inspection referred to in § 459.103(b) shall be prescribed by the contract between the participating utilities and the ECCO, and what aspects shall be left to the discretion of the ECCO.

(j) *Standards for materials and installation.* The plan shall require that any measures installed according to § 459.103(c) shall, at least, meet any applicable standards for materials and installation in Subparts G, H, and I of 10 CFR Part 456 (the final rule to the Residential Conservation Service Program.)

(k) *Competition in supply and installation of measures.* The plan shall include an analysis of the impact the demonstration is likely to have on existing small and minority-owned businesses including steps which will be taken to reduce any adverse impacts. The plan shall also list the provisions which must be included in the contract in order to reduce other adverse effects of the contract on competition. This list shall include, at least, the following provisions—

(1) The ECCO shall subcontract installation of all energy conservation measures with local contractors;

(2) These subcontractors shall not be affiliates or subsidiaries of the ECCO, nor subject to the control of the ECCO except as to performance of the subcontract;

(3) The ECCO shall not provide an unreasonably large share of subcontracts to any one subcontractor;

(4) The EECO shall not provide to any one subcontractor exclusive installation rights in an unreasonably large portion of the program area;

(5) The ECCO shall not use procedures for selecting subcontractors which unreasonably restrict the entry of new firms into the market for installation services in the program area; and

(6) The ECCO shall not impose in the subcontract any restrictions on the activities of the subcontractors outside the program area.

(l) *Customer complaints.* The plan shall describe how any customer who has a complaint about any action carried out under the contract may attempt to have the complaint resolved.

(m) *How utility payments shall be accounted.* The plan shall describe how the costs incurred by a participating utility in fulfilling its obligations under the contract shall be recovered. The plan shall discuss what effect this method of cost recovery is likely to have on the utility's profits during the life of the contract.

(n) *Schedule.* The plan shall contain a schedule for the accomplishment of the following major elements of the plan—

(1) The signing of the contract;

(2) The initiation of inspections of homes;

(3) The completion of installation of measures in all homes in the program area; and

(4) The initiation of the measurement plan.

§ 459.106 What financial assistance the Assistant Secretary may provide.

(a) *Purpose of this section.*

The purpose of this section is to identify those activities for which the Assistant Secretary will provide financial assistance, and the administrative requirements with which each grantee must comply.

(b) *Activities for which the Assistant Secretary may provide financial assistance.*

The Assistant Secretary may make available financial assistance for planning and administration of each REEP demonstration. In addition, the Assistant Secretary may make available financial assistance for the outreach and information activities connected to the demonstration, for audits and post-installation inspections, and for any other costs not excluded in paragraph (c) below.

(c) *Activities for which the Assistant Secretary shall not provide financial assistance.*

The Assistant Secretary shall not provide financial assistance for the purchase of any energy conservation measures nor for the installation of such measures in residences.

(d) *Types of financial assistance.*

Financial assistance under this program is to be made available in the form of grants.

(e) *Financial and other program reporting requirements.*

(1) Each State or local government receiving financial assistance under this Part shall annually provide financial information to the Assistant Secretary. Financial information shall be reported in accordance with Attachment H of OMB Circular A–102.

(2) Grantees receiving awards under this part shall submit quarterly reports to the Assistant Secretary on program performance, which shall include, at least—

(i) Number of residences inspected;

(ii) Total quantity of measures installed; and

(iii) Estimated energy saved.

(f) *Administration of grants.*

(1) Grantees receiving financial assistance provided under this part shall comply with all applicable laws and regulations including, but without limitation, the requirements of—

(i) Federal Management Circular 74–4, 34 CFR Part 255, entitled "Cost Principles Applicable to Grants and Contracts with States and local governments";

(ii) Office of Management and Budget Circular A–102 in-Aid to State and local governments";

(iii) DOE Nondiscrimination in Federally Assisted Programs Regulation (10 CFR Part 1040, 45 FR 40514, June 13, 1980);

(iv) Doe Assistance Regulations 10 CFR Part 600 Subpart A and B; and

(v) DOE Procedures for Financial Assistance Appeals 10 CFR 1024.

(2) Grants provided under this part shall comply with such additional procedures applicable to this part as

DOE may from time to time prescribe for th administration of grants.

§ 459.107 Application procedures.

(a) *Who may apply.* Only a state government or a local government may apply. At least the following persons are eligible to apply—

(1) A Governor of a State;

(2) Any agency of a State government;

(3) An official of a local government;

(4) Any agency of a local government; and

(5) Any utility which is an agency of a State or local government.

(b) *When applications are due.* Applications must be submitted to the Assistant Secretary within six months of the date of publication of the final regulations.

(c) *Who must approve the application before it is submitted.* The application must be approved in writing by the following persons—

(1) The public utility which is to enter into the contract under the plan;

(2) The State regulatory authority having ratemaking authority over the public utility, in the case of a regulated utility; and

(3) The Governor (or any State agency specifically authorized under State law to approve such plans) of the State whose government is submitting the application'(if the application is submitted by a State government) or of the State in which the local government is located (if the application is submitted by a local government).

(d) *Required hearings.* Before the application is submitted, the person submitting it must hold a hearing on the application.

(1) The applicant must give at least 30 days public notice of the hearing. This notice must include at least one annoucement in a daily newspaper of general circulation serving the program area. This notice must also include direct notification of the public utilities providing service in the program area, the State regulatory authority and trade associations of the suppliers and installers who serve the program area.

(2) The application must be published at least 30 days before the hearing. A copy of the application must be provided to any person requesting one. There may be a charge for a copy of the application.

(3) The public utility(ies) named in the application, suppliers and installers of energy conservation measures and members of the public must have the opportunity to comment on the application at the hearing.

§ 459.108 What the application must include.

(a) *The plan.* The application must include a copy of the proposed plan. The plan must contain the items listed in § 459.105.

(b) *the hearing record* The application must include a record of the public hearing held according to § 458.107(d). This record shall consist of the following items—

(1) A copy of the announcement of the hearing;

(2) A list of the publications in which the announcement appeared and the date when it appeared;

(3) A list of the participants in the hearing;

(4) Either a summary of the comments at the hearing or a transcript of the hearing, and

(5) A summary of the changes made, if any, to take into account the comments received on the proposed applications.

(c) *Financial assistance.* If the applicant wishes to receive financial assistance to carry out the paln, then the application shall describe what labor and materials the applicant (or any other person named in the plan) shall provide to carry out the plan. The applicant shall also describe what labor and materials the applicant will pay for with DOE financial assistance, and shall name any persons who will receive payment from the DOE financial assistance and the amount they will receive. Applicants shall provide this information in accordance with Attachment M of OMB Circular A–102.

(d) *Approvals.* The application must include a copy of the written approvals of the proposed plan by the Governor, the utility, and the State regulatory authority (if appropriate), as described in § 459.107(c).

§ 459.109 What the Assistant Secretary must consider in approving applications.

(a) *Purpose.* This section sets forth the factors which the Assistant Secretary must consider in deciding which of the applications to approve and how much financial assistance to provide to each approved applicant.

(b) *Approving proposed plans.* If a plan fulfills all the basis requirements of Section 459.107, the Assistant Secretary shall take into consideration the following additional factors in approving a proposed plan—

(1) *Energy savings.* The potential for energy savings from the proposed plan;

(2) *Financial successes.* The likelihood that the value of the energy saved by public utilities under the program will be sufficient to cover the estimated cost of the energy conservation measures to be supplied and installed under the program;

(3) *Competition.* The anticipated effects of the program on competition in the portion of the service area of the public utility designated in the contract entered into under the plan;

(4) *Diversity.* The extent to which the proposed plan contributes to an experimental program design which is sufficiently diverse in terms of geographic scope (location, climate, housing types); utility characteristics (fuel type, prices); and client characteristics (income, age, etc.) to provide the basis for a national perspective on the feasibility of the program; and

(5) *Management control.* The qualifications of management personnel and management procedures proposed.

(c) *Approving financial assistance.* The Assistant Secretary shall take into consideration the following factors in approving an application for financial assistance—

(1) *Completeness.* Whether the application contains the information about how the financial assistance will be used, as required by Section 459.108(c); and

(2) *Effect on future programs.* The effect of the level of financial assistance on the probability that similar programs would be initiated without Federal financial assistance after the four demonstrations are completed.

§ 459.110 When the Assistant Secretary may or must revoke an approved plan.

(a) The Assistant Secretary shall revoke the approval of any plan and shall terminate the provision of financial assistance if the Assistant Secretary determines, in consultation with the Federal Trade Commission and after notice and the opportunity for a hearing, that carrying out such plan—

(1) causes unfair methods of competition;

(2) has a substantial adverse effect on competition in the portion of the service area of the public utility designated by the contract entered into under the plan; or

(3) provides a supplier or contractor of energy conservation measures with an unreasonably large share of the contracts for the supply of installation of such measures under such plan in the service area of the public utility designated by the contract entered into under such plan.

(b) The Assistant Secretary may revoke approval of any plan and may terminate the provision of financial assistance whenever the Assistant Secretary determines that the plan is being inadequately implemented.

(c) Any decision to suspend or terminate a grant under this part shall be done in accordance with the DOE Financial Assistance Regulations (10 CFR Part 600).

§ 459.111 Miscellaneous provisions.

(a) *Relationship to the Residential Conservation Service (RCS) program.* Any public utility entering into a contract under a plan for the establishment of a residential energy efficiency program approved under Section 459.109 shall not be required to carry out, with respect to any residential building located in the portion of the utility's service area designated in the contract, the actions required of such utility by 10 CFR 456.306, 307, 308, 309, and 312(c) (RCS services), if the contract requires such actions (or equivalent actions as determined by the Assistant Secretary) to be taken.

(b) *Procedure for amending an approved plan.* Any State or local government having an approved plan under this part may submit amendments to the plan at any time, provided that such amendments are developed according to the same procedures required for the development and submission of plans under Section 459.107. The Assistant Secretary may, for good cause, waive any procedural requirements of § 459.107 with respect to an amendment.

[FR Doc. 81-2574 Filed 1-23-81; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 21192; Notice No. 80-26B]

High Density Traffic Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: This supplemental notice reopens the comment period for Notice No. 80-26. In addition, the notice sets forth a proposed modification of the high density rule to expressly codify the method by which IFR reservations are to be obtained and when they must be obtained. This proposal is necessary for maintenance of orderly operations at high density airports and for efficient utilization of the navigable airspace.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 21192, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. Comments delivered must be marked: Docket No. 21192. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Faberman, Assistant Chief Counsel for Regulations and Enforcement, (AGC-200), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 426-3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the supplemental proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the date specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. The FAA requests that interested persons, when submitting comments, refer to the proposal by the sections to which they relate.

Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 21192." The postcard will be dated, time stamped, and returned to the commenter.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

On December 16, 1980, the FAA issued Notice No. 80-26 (45 FR 84380; 12/22/80). The notice set forth a proposed clarification to 14 CFR 93.129, which allows aircraft operators to obtain additional IFR reservations under certain circumstances, to provide that air carriers and scheduled air taxis may not obtain IFR reservations beyond those specifically allocated by § 93.123.

The notice concerned the high density rule which designates high density traffic airports and prescribes limitations on the operations that can be conducted at those airports. Section 93.123 established limits on the number of reservations for IFR (Instrument Flight Rules) operations that may be conducted at high density airports and further allocates those allowable IFR reservations among specified classes of users at each high density airport. The preamble to the amendment described the purpose of the rule in terms of effecting the efficient utilization of the navigable airspace, stating it was "to provide relief from excessive delays at certain major terminals." Under § 93.129, operations in excess of the number allocated for reservation at a particular high density airport are presently permitted for operators who have obtained additional reservations. Generally, additional reservations are granted when the aircraft can be accommodated without causing significant additional delay to the allocated operations for the particular airport.

The high desity rule while accommodating all classes of users, has given a greater priority to certificated air carriers and schedules air taxi operators who provide common carriage service in accordance with the policy of recognizing the national interest in maintaining a public mass air transportation system. A great majority of the IFR reservations provided for by the rule have been allocated to scheduled operations although allowance has been specifically made under the rule to provide slots to non-scheduled operations. This included giving a specific number of slots to operations conducted by those in the "other" class which includes general aviation. As stated in the notice, the purpose of 14 CFR 93.129 was to allow

unscheduled operators to conduct operations in excess of those permitted by the basic allocation when circumstances permitted.

Although the current language of § 93.129(a) would allow any operator (including an air carrier or scheduled air taxi) to obtain additional IFR reservations, the purpose of this section was not to expand the hourly IFR reservations available to air carriers and scheduled air taxis, but was simply a means to provide some flexibility for those "other" operators who could not obtain or had no need for daily slots. As indicated in the preamble to the original notice of proposed rulemaking (Notice 68–20; 33 FR 12580, 9/5/68) as part of the discussion concerning giving a greater priority to common carriers providing scheduled air transportation:

The proposal takes into account the relative inflexibility of scheduled operations compared to unscheduled operations.

Although several commenters have alleged that air carriers and air taxis have utilized this provision to obtain slots, the FAA was unaware that these operators were using this provision for "scheduled" operations. It must be noted that the commenters did not specifically identify any scheduled air carrier operations conducted in a manner contrary to this policy. As stated in the NPRM, the intention of the proposal was to continue to allow air carriers and air taxis to utilize § 93.129 on an occasional basis for positioning of flights or to replace inoperative aircraft. The FAA is aware that these types of operations as well as those conducted under limited exemption authority have resulted in hourly operations in excess of those allocated in accordance with § 93.123. These operations are consistent with the rule and the policy, and could well account for the excess number of operations during the hours cited by the commenters.

The FAA has concluded, however, that a final rule should not be issued in connection with this proposal until the agency is in a position to investigate the allegations of the commenters referred to above and obtain complete data on all operations which are conducted into high density airports without a reservation allocated in accordance with § 93.123. Therefore, the FAA will closely monitor these operations during the reopened comment period and will investigate all activities conducted at these airports.

In this connection, it must be emphasized that the fact that there may have been or may be some operations conducted in a manner which is inconsistent with the high density rule and the policies upon which it is founded is not a basis for allowing continued use of § 93.129 for scheduled operations. The response must be to eliminate such operations rather than allowing the numbers to increase.

There must be a clear distinction between those operations conducted pursuant to § 93.123 as opposed to those conducted under § 93.129. To allow a scheduled operator to utilize § 93.129 on a regular basis as a means of supplementing its authorized IFR slots would amount to an amendment of the hourly limitations contained in § 93.123. The numbers of regularly scheduled operations permitted in accordance with § 93.123 have been established during a lengthy regulatory process. Any changes to those numbers must be as part of the public rulemaking process in which all members of the public have an opportunity to comment. Unrestricted use of § 93.129 for scheduled operations could, to a large extent, limit the access by all others seeking entry to high density airports. Moreover, with respect to National Airport, this would be inconsistent with the Metropolitan Washington Airports Policy, issued by the Secretary of Transportation on August 15, 1980, as well as with the final rule implementing that policy, issued by the Administrator on September 15, 1980, which have clearly delineated the number of slots to be utilized by air carriers and air taxis.

Under the proposal, § 93.129 would be amended to clearly provide that scheduled operations of air carriers and scheduled air taxis are ineligible for additional reservations beyond those allocated under § 93.123. For the purpose of this section, a scheduled operation would be defined as an operation conducted by an air carrier or scheduled air taxi which involves published service between points regularly served by that air carrier or air taxi unless the service is conducted pursuant to the charter or hiring of aircraft, or is a nonpassenger flight. This rule does not affect the provisions in § 93.123(b)(4) which provide that second sections of scheduled air carrier flights may be conducted without regard to the limitation on hourly IFR reservations. As modified, the rule would allow air carriers to seek additional reservations under § 93.129 on an occasional basis for positioning of flights or to replace inoperative aircraft, but would prevent utilization of this section to avoid the limitation on operations contained in § 93.123. It must be noted that this provision will not affect § 93.123(b)(3) which permits non-scheduled flights of scheduled air carriers to be conducted at Washington National Airport without regard to the limitation of 40 IFR reservations per hour.

The FAA solicits additional comments on this proposal. In addition, specifics are requested as to the comment that there are a number of regular scheduled operations currently being conducted which would be eliminated by this proposal. This additional time for submission of comments will allow commenters who stated they had additional "materials and analyses" to submit that information for review.

Obtaining IFR Reservations

During review of this proposal and the comments submitted in response to it, it has become apparent that there are some questions concerning the method by which an operator can obtain an IFR reservation at a high density airport. In the preamble to the NPRM originally proposing the high density rule, the following was stated:

> For flights between two high density airports, approved reservations for the takeoff and arrival would have to be obtained prior to takeoff. After receipt of the approval, the operator would file an IFR flight plan in the usual manner.

This procedure has been utilized since the rule was first promulgated. Moreover, in Advisory Circular No. 90–43D, "Operations Reservations for High Density Traffic Airports," the method by which an IFR reservation can be obtained is clearly set forth (a copy of the Advisory Circular is contained in the docket). Such a reservation can only be obtained from the Airport Reservation Office (ARO) by contacting the ARO directly or submitting a request for reservation to the nearest Flight Service Station. Therefore, the practice has been that an operator intending to fly IFR to a high density airport must have a reservation under § 93.123 or an approved IFR reservation from the ARO to land at that high density airport prior to takeoff. Once the reservation is obtained the operator can file its IFR flight plan. Since air carriers must file an IFR flight plan to the airport of destination, an air carrier going to a high density airport would be required to obtain an IFR reservation for the arrival airport from the ARO before the air carrier files a flight plan for that operation unless that operation has a slot allocated to it for that particular flight under § 93.123. The operator must have an IFR reservation for the arrival airport even if it intends to change the operation to VFR during flight. Of course, an air carrier departing a high density airport would be required to have the IFR reservation for the

departure airport before it files the IFR flight plan. This is not intended to change the practice of allowing operators to file IFR flight plans with the FAA for computer storage.

Any operation which is not conducted consistent with this procedure is subject to civil penalty in accordance with the Federal Aviation Act of 1958, as amended. It is proposed to amend the regulation to expressly set forth this longstanding procedure. Comments are invited as to whether there is a need to codify this requirement and whether changes in this procedure would be appropriate.

In this connection the agency is looking into the possibility of rejecting an IFR flight plan filed for an operation to or from a high density airport unless the operator has already obtained appropriate reservations. Comments are solicited on this proposal.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

§ 93.129 [Amended]

1. By amending § 93.129(a) to substitute the words "the operation is not a scheduled operation and the operator" in lieu of the word "he" in the first sentence.

2. By amending § 93.129 to add paragraphs (c) and (d) to read as follows:

* * * * *

(c) For the purpose of this section, a scheduled operation is any operation conducted by an air carrier or scheduled air taxi which involves published service between points regularly served by that air carrier or air taxi unless the service is conducted pursuant to the charter or hiring of aircraft or is a nonpassenger flight.

(d) An IFR reservation must be obtained in accordance with procedures established by the Administrator. For flights between two high density airports or to or from a high density airport, approved reservations for the takeoff and arrival shall be obtained prior to takeoff.

(Secs. 103, 307(a), (c), 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1347 (a) and (c), and 1354 (a))

Note.—The Agency has determined that this document is not a significant regulation under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979). Since this regulatory action involves the issuance of regulations which reflect existing requirement, the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Issued at Washington, D.C., on January 19, 1981.

B. Keith Potts,

Acting Director Air Traffic Service.

[FR Doc. 81-2621 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 87

[CGD 77-136]

Implementation and Interpretation of the 72 COLREGS

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend the application procedure for Certificates of Alternative Compliance. The specific amendments will deal with: (1) The number, placement and visibility of station or signal lights and shapes; (2) the placement and characteristics of sound signaling devices; and, (3) required maintenance of permanent records of certification and the termination date of the certification. The existing regulations have been found to be unnecessarily restrictive and burdensome to applicants. The proposed amendments will provide for faster, more efficient administration of the certification process and will simplify application requirements.

DATES: Comments must be received on or before March 27, 1981.

ADDRESSES: Comments should be submitted to Commandant (CGD 77-136) (G-CMC/24), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, between the hours of 7 a.m. and 5 p.m. Monday through Thursday. Copies of the draft evaluation are available during the same hours and days at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Llana, Project Manager, Office of Marine Environment and Systems, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, (202) 426-4958.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 77-136, give the specific section of the proposal to which the comment applies, and give the reason for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope

The proposal may be changed in view of the comments received. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial for this rulemaking.

Drafting Information

The principal persons involved in drafting this rule making are Mr. Chris Llana, Project Manager, Office of Marine Environment and System and Lieutenant Michael Tagg, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Present regulations permit only a vessel's owner to apply for a Certificate of Alternative Compliance. Since certification is dependent upon the function of the vessel and its adequate identification, the requirement that the applicant be the owner is unnecessary. The proposed amendment to § 87.5 (a) and (b) and § 87.9(a) would permit application by the owner, builder, operator or agent.

Most applications for certification are made by builders while the vessel is under construction. As vessels do not receive an official documentation number until completed, § 87.5(a)(2) would be amended to allow for submission of the vessel's shipyard hull number as a means of vessel identification. Similarly, § 87.5(o)(3) would be amended to require submission of the vessel name and home port only if known.

Current regulations require that an application for a Certificate of Alternative Compliance along with a set of plans be submitted to Coast Guard Headquarters prior to issuance of the Certificate. For many vessels, a set of plans must be submitted to the District Commander for approval of design and construction features. An unnecessary administration burden would be eliminated by amending § 87.5(a) to require application to the District Commander in lieu of Coast Guard Headquarters.

Sections 87.5(a) (7) and (8) require that a certified copy of the plans of a

documented vessel or an accurate scale drawing of a nondocumented vessel be submitted to Coast Guard Headquarters. The Coast Guard feels that the requirement that plans be certified is unnecessary and would amend § 87.5(a) (7) and (8) accordingly.

Certificates of Alternative Compliance currently expire on June 30 of the calendar year five years after the date of issuance. Requests for renewal must be submitted at least 90 days prior to the expiration date. Failure to comply can subject the owner and operator to penalties. There should be no need for a renewal as long as the initial conditions do not change. The renewal requirement would be deleted by revoking § 87.13 and certifications would remain effective until terminated pursuant to § 87.17.

Coast Guard vessels certified to be in alternative compliance are presently listed in Appendix B of Part 87. Appendix C was to contain a comparable listing for commercial vessels, but it was not published. Subsequent experience has shown that this information is not needed by the public, therefore, it is proposed to amend § 87 by deleting Appendices B and C. The notice of certification would continue to be placed in the Federal Register as required by 33 U.S.C. 1605(c) and a permanent record of Certificates issued maintained at Coast Guard Headquarters (G–WWM).

In addition to the substantive amendments being proposed, various editorial changes would be made to clarify the regulations and make them more consistent with language in the 72 COLREGS. These proposed changes include the addition of a general section explaining the function of the alternative compliance regulations.

The Coast Guard has evaluated this proposal under the Department of Transportation's "Policies and Procedures for Simplification Analysis, and Review of Regulations" (DOT Order 2100.5, May 22, 1980) and has found this to be a nonsignificant rulemaking. A draft evaluation has been prepared and is included in the public docket. It may be obtained as indicated under "Addressess."

The Regulatory Flexibility Act (94 Stat. 1164.) Public Law 96–354, September 19, 1980 requires an analysis of the impact of proposed regulations on small businesses, organizations and small governmental jurisdictions. The proposed regulations will impact on the few shipyards which build the highly specialized vessels needing certification. The existing paperwork burden on these yards will be substantially reduced by simplifying the procedure and placing the approval authority in the district office. The proposed regulations are mandated by treaty (International Regulations for Preventing Collisions at Sea, 1972), and will not overlap, duplicate or conflict with any other rules. For these reasons, pursuant to § 605(b) of The Regulatory Flexibility Act, it is certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

For the reasons set out in the premable, Part 87–72 COLREGS: Implementing Rules is proposed to be amended as follows:

PART 87–72 COLREGS: IMPLEMENTING RULES

1. By revising § 87.1 to read as follows:

§ 87.1 Definitions.

As used in this subchapter:

"72 COLREGS" refers to the International Regulations for Preventing Collisions at Sea, 1972, done at London, October 20, 1972, as rectified by the Proces-Verbal of December 1, 1973, as amended.

"A vessel of special construction or purpose" means a vessel designed or modified to perform a special function and whose arrangement is thereby made relatively inflexible.

"Interference with the special function of the vessel" occurs when installation or use of lights, shapes, or sound-signalling appliances under the 72 COLREGS prevents or significantly hinders the operation in which the vessel is usually engaged.

2. By adding a new § 87.3 to read as follows:

§ 87.3 General

Vessels of special construction or purpose which cannot fully comply with the light, shape, and sound signal provisions of 72 COLREGS without interfering with their special function may instead meet alternative requirements. The Chief of the Marine Safety Division in each Coast Guard District Office makes this determination and requires that alternative compliance be as close as possible with the 72 COLREGS. These regulations set out the procedure by which a vessel may be certified for alternative compliance.

3. By revising §87.5 to read as follows:

§ 87.5 Application for a Certificate of Alternative Compliance.

(a) The owner, builder, operator, or agent of a vessel of special construction or purpose who believes the vessel cannot fully comply with the 72 COLREGS light, shape, or sound signal provisions without interference with its special function may apply for a determination that alternative compliance is justified. The application must be in writing, submitted to the Chief of the Marine Safety Division of the Coast Guard District in which the vessel is being built or operated, and include the following information:

(1) The name, address, and telephone number of the applicant.

(2) The identification of the vessel by its—

(i) Official number;

(ii) Shipyard hull number;

(iii) Hull identification number; or

(iv) State number, if the vessel does not have an official number or hull identification number.

(3) Vessel name and home port, if known.

(4) A description of the vessel's area of operation.

(5) A description of the provision for which the Certificate of Alternative Compliance is sought, including:

(i) The 72 COLREGS Rule or Annex section number for which the Certificate of Alternative Compliance is sought;

(ii) A description of the special function of the vessel that would be interfered with by full compliance with the provision of that Rule or Annex section; and

(iii) A statement of how full compliance would interfere with the special function of the vessel.

(6) A description of the alternative installation that is in the closest possible compliance with the applicable 72 COLREGS Rule or Annex section.

(7) A copy of the vessel's plans or an accurate scale drawing that clearly shows—

(i) The required installation of the equipment under the 72 COLREGS;

(ii) The proposed installation of the equipment for which certification is being sought; and

(iii) Any obstructions that may interfere with the equipment when installed in—

(A) The required location; and

(B) The proposed location.

(b) The Coast Guard may request from the applicant additional information concerning the application.

4. By revising § 87.9 to read as follows:

§ 87.9 Certificate of Alternative Compliance: Contents.

The Chief of the Marine Safety Division issues the Certificate of Alternative Compliance to the vessel when he determines that it cannot comply fully with 72 COLREGS light, shape, and sound signal provisions

without interference with its special function. This Certificate includes—

(a) Identification of the vessel as supplied in the application under § 87.5(a)(2);

(b) The provision of the 72 COLREGS for which the Certificate authorizes alternative compliance;

(c) A certification that the vessel is unable to comply fully with the 72 COLREGS light, shape, and sound signal requirements without interference with its special function;

(d) A statement of why full compliance would interfere with the special function of the vessel;

(e) The required alternative installation;

(f) A statement that the required alternative installation is in the closest possible compliance with the 72 COLREGS without interfering with the special function of the vessel.

(g) The date of issuance;

(h) A statement that the Certificate of Alternative Compliance terminates when the vessel ceases to be usually engaged in the operation for which the certificate is issued.

§ 87.13 [Reserved]

5. By removing and reserving § 87.13.

6. By revising § 87.17 to read as follows:

§ 87.17 Certificate of Alternative Compliance: Termination.

The Certificate of Alternative Compliance terminates if the information supplied under § 87.5(a) or the Certificate issued under § 87.9 is no longer applicable to the vessel.

§ 87.17 [Amended]

7. By removing the note following § 87.17.

8. By revising § 87.18 to read as follows:

§ 87.18 Notice and record of certification of vessels of special construction or purpose.

(a) In accordance with 33 U.S.C. 1605(c), a notice is published in the Federal Register of the following:

(1) Each Certificate of Alternative Compliance issued under § 87.9; and

(2) Each Coast Guard vessel determined by the Commandant to be a vessel of a special construction or purpose.

(b) Copies of Certificates of Alternative Compliance and documentations concerning Coast Guard vessels are available for inspection at Coast Guard Headquarters, Office of Marine Environment and Systems, Washington, D.C.

(c) The owner or operator of a vessel issued a Certificate shall ensure that the vessel does not operate unless the Certificate of Alternative Compliance or a certified copy of that Certificate is on board the vessel and available for inspection by Coast Guard personnel.

Appendices A and B [Removed]

9. By removing Appendices B and C.

(Sec. 8, 91 Stat. 310 (33 U.S.C. 1607); 49 CFR 1.46(n)(11))

Dated: January 15, 1981.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 81-2472 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR PARTS 605, 606, 642, 643, 644, 645, 646, 668, 674, 675, 676, 682, 683, 690, and 692

Public Meetings on Proposed Rules Implementing the Higher Education Amendments of 1980

AGENCY: Department of Education.

ACTION: Notice of public meetings on proposed rules implementing the Higher Education Amendments of 1980.

SUMMARY: Public meetings are scheduled on the following proposed rules implementing the Higher Education Amendments of 1980. See Supplementary Information for dates, times, and locations of the public meetings.

PART 605—Continuing Education Outreach—State-Administered Program FR Vol. 45 #251, pp. 86308–86311, December 30, 1981.

PART 606—Continuing Education Outreach—Special Projects FR Vol. 45, #251, pp. 86315–86317, December 30, 1981.

PART 642—Training Program for Special Program Staff and Leadership Personnel FR Vol. 45, #252, pp. 86922–86926, December 31, 1981.

PART 643—Talent Search Program FR Vol. 45, #252, pp. 86908–86912, December 31, 1981.

PART 644—Educational Opportunity Centers Program FR Vol. 45, #252, pp. 86894–86898, December 31, 1981.

PART 645—Upward Bound Program FR Vol. 45, #252, pp. 86814–86920, December 31, 1981.

PART 646—Special Services for Students from Disadvantaged Background Program FR Vol. 45, #252, pp. 86900–86905, December 31, 1981.

PART 668—Student Assistance: General Provisions FR Vol. 45, #252, pp. 86854–86869, December 31, 1981.

*PART 674—National Direct Student Loan Program, January 19, 1981.

*PART 675—College Work Study Program, January 19, 1981.

*PART 676—Supplemental Educational Opportunity Grant Program, January 19, 1981.

PART 682—Guaranteed Student Loan Program, FR Vol. 46, pp. 3866–3873, 3922–3923, January 16, 1981.

*PART 683—Parent Loan Program, January 19, 1981

PART 690—Pell Grant Program, FR Vol. 45, #251, pp. 86394–86405, December 30, 1981.

PART 692—State Student Incentive Grant Program FR Vol. 45, #251, pp. 86304–86306, December 30, 1981.

SUPPLEMENTARY INFORMATION:

Dates, Times, and Locations of Public Meetings

February 11, 1981—Student Financial Assitance Program

Evanston, Illinois: Location, Northwestern University, 1999 Sheridan Road, Norris Center, Room #1, Lewis Room (parking at Dycke Staduim), Time: 9:00 a.m.–5:00 p.m.

February 11, 1981—Title I and TRIO Programs

Evanston, Illinois: Location, Northwestern University, 1999 Sheridan Road, Norris Center, Room #2, McCormick Auditorium (parking at Dycke Stadium), Time: 9:00 a.m.–5:00 p.m.

February 17, 1981—Student Financial Assistance

San Francisco, California: Location, San Francisco State University, 1600 Holloway Avenue, McKenna Theater—Creative Arts Building, Time: 9:00 a.m.–5:00 p.m.

February 17, 1981—Title I and TRIO Programs

San Francisco, California: Location, San Francisco, State University, 1600 Holloway Avenue, Conference Room A–E Student Union, Time: 9:00 a.m.–5:00 p.m.

February 19, 1981—Title I and TRIO Programs

Arlington, Texas: Location, University of Texas, 500 South West Street, San Saba Room—Hereford Student Center, Time: 9:00 a.m.–5:00 p.m.

February 19, 1981—Student Financial Assistance Programs

Arlington, Texas: Location, University of Texas, 500 Monroe Street, A–1 Room—Classy Theater, Time: 9:00 a.m.–5:00 p.m.

February 25, 1981—Student Financial Assistance Programs

Washington, D.C.: Location, GSA Auditorium, Regional Office Building #3, 7th and D Streets, S.W., (D Street Entrance), Time: 9:00 a.m.–5:00 p.m.

February 25, 1981—Title I and TRIO Programs

Washington, D.C. NASA Auditorium, Federal Office Building #6 6th Floor, 400 Maryland Avenue S.W., Time: 9:00 a.m.–5:00 p.m.

*Page numbers are not available at this time for the regulations published on January 19, 1981.

FOR FUTHER INFORMATION CONTACT:

Washington, D.C.

James Moore for Student Financial Assistance Programs, Department of Education, 400 Maryland Ave., S.W., (Room 4000, ROB-3), Washington, D.C. 20202, (202) 245-2247.

John Rison Jones, Jr. for Title I and TRIO Programs, Department of Education, 400 Maryland Ave., S.W., (Room 4060, ROB-3) Washington, D.C. 20202, (202) 245-2787.

Chicago, Illinois

Mr. Ralph Church, Secretary's Regional Representative, Department of Education, (312) 886-5360.

San Francisco, California

Dr. Caroline Gillin, Secretary's Regional Representative, Department of Education, (415) 556-4920.

Dallas, Texas

Mr. Edward J. Baca, Secretary's Regional Representative, Department of Education, (214) 767-3626.

The purpose of these meetings is to receive oral and written comments and suggestions on the published proposed rules or interim final regulations. Persons interested in attending any of the meetings should notify the individual responsible for the coordination of the meeting at the location(s) included above. Each person planning to make oral comments is urged to limit their presentation to a maximum of 10 minutes. The individual should notify the appropriate office 5 working days in advance of the meeting for scheduling purposes together with name, address, telephone number during working hours, position of title, and area of interest. Individuals who will need signing assistance (for individuals with hearing impairments) must notify the appropriate individual at the location the individual plans to attend 5 working days prior to the scheduled meeting. The Department will be accepting written statements for the record at these meetings. Interested persons may either deposit the statements at the meeting or they may mail them to the appropriate individual named below:

Title I—John E. Donahue, Office of Postsecondary Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3717, ROB-3), Washington, D.C. 20202.

Student Assistance General Provisions—William L. Moran, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, S.W., (Room 4318, ROB-3) Washington, D.C. 20202.

State Student Incentive Grant Program—Lanora G. Smith, Office of Student Financial Assistance, Department of Education, (Room 4004, ROB-3)

Pell Grants—William L. Moran (See address above.)

College Work Study Program—Lynn Laverentz, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, S.W., (Room 4018, ROB-3) Washington, D.C. 20202

National Direct Student Loan Program—Lynn Laverentz, (See address above.)

Supplemental Education Grant Program—Lynn Laverentz, (See address above.)

Guaranteed Student Loan Program—Jane Bryson, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, S.W., (Room 4310, ROB-3) Washington, D.C. 20202.

Parent Loan Program—Jane Bryson, (See address above.)

Talent Search Program—Mary K. Smith, Office of Postsecondary Education, Department of Education, 400 Maryland Avenue, S.W., (Room 3514, ROB-3) Washington, D.C. 20202.

Upward Bound Program—Mary K. Smith, (See address above.)

Staff Training Program—Mary K. Smith, (See address above.)

Educational Opportunity Center Program—Mary K. Smith, (See address above.)

Special Services Program—Mary K. Smith, (See address above.)

Comments and suggestions submitted in writing will be available for public review in the offices listed above between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week.

(Catalog of Federal Domestic Assistance: Title I: Continuing Education Outreach: State-Administered Program (Catalog number not yet assigned); Title I: Continuing Education Outreach: Special Projects (Catalog number not yet assigned); Title IV, Student Financial Aid Programs: Pell Grant Program, 84.063; Supplemental Education Opportunity Grant Program, 84.007; State Student Incentive Grant Program, 84.069; Guaranteed Student Loan Program, 84.032; College Work-Study program, 84.033; National Direct Student Loan program, 84.038; and Title IV, Special Programs: Training Program for Special Programs Staff and leadership Personnel program, 84.103; Upward Bound program, 84.047; Talent Search Program, 84.044; Special Services for Disadvantaged Students programs, 84.042; and Educational Opportunity Centers program, 84.066.)

Approved January 19, 1981.

Albert H. Bowker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 81-2399 Filed 1-23-81; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1698-1]

Review of Standards of Performance for New Stationary Sources: Ferroalloy Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of Standards.

SUMMARY: EPA has reviewed the standards of performance for ferroalloy production facilities (41 FR 18497, 41 FR 20659). The review is required under the Clean Air Act, as amended August 1977. The purpose of this notice is to announce EPA's intent not to undertake revision of the standards at this time.

DATE: Comments must be received on or before March 27, 1981.

ADDRESS: Comments: Send comments to the Central Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. A-80-45.

Docket: Docket No. A-80-45, containing supporting information used in reviewing the standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

Background Information Document. The document "A Review of Standards of Performance for New Stationary Sources—Ferroalloy Production Facilities" (EPA report number EPA-450/3-80-041) is available upon request from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone (919) 541-2777.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley T. Cuffe, Chief, Industrial Studies Branch, Emission Standards and Engineering Division, (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. Telephone: (919) 541-5295.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1974, EPA proposed a standard under Section 111 of the Clean Air Act to control particulate matter and carbon monoxide emissions from electric submerged-arc furnaces in the ferroalloy industry. The standard, promulgated on May 4, 1976, applies to any facility constructed or modified after October 21, 1974. The standard for particulate matter under § 60.262 limits the discharge to the atmosphere from electric submerged-arc furnaces to:

1. 0.45 kg/MW-h (0.99 lb/MH-h) for those furnaces that produce silicon metal and high-silicon-content ferroalloys.
2. 0.23 kg/MW-h (0.51 lb/MW-h) for those furances that produce other designated ferroalloys and calcium carbide.
3. Less than 15 percent opacity from any control device serving an electric arc furnace.
4. Zero visible emissions from the fume capture system of the furnace.
5. Zero visible emissions from the fume capture system during the tapping operation

for at least 60 percent of the tapping period, except when a blowing tap occurs.

6. 10 percent opacity or less from associated dust handling equipment.

The standard for carbon monoxide emissions under § 60.263 limits discharge to the atmosphere to less than 20 percent by volume.

The current standard does not cover other types of ferroalloy production facilities. The electrolytic and metalothermic processes are used at 12 locations to produce relatively small quantities of specialty metals. Because of their limited applicaton and relatively low air pollution potential, excluson of these processes appears justified.

The Clean Air Act Amendments of 1977 require that the Administrator of EPA review the established standards of performance for new stationary sources (NSPS) at least every 4 years and revise them as appropriate [Section 111(b)(1)(B)]. EPA has completed such a review of the standard of performance for the ferroalloy industry and has decided not to revise this standard. EPA invites comments on this decision and on the findins on which it is based.

Findings:

Industry Statistics

In 1971, there were approximately 145 electric submerged-arc furnaces used for the production of ferroalloys and 13 for calcium carbide production. Domestic production at that time was approximately 1.8 Tg (2 million tons) per year. Because of a sharp increase in imports of ferroalloys, however, domestic production has declined to a current level of approximately 1.35 Tg (1.5 million tons) per year, and the number of furnaces has decreased to 89 for ferroalloy production and 7 for calcium carbide production. Since no new furnaces have been built or modified since 1974, none are currently subject to the new source performance standard; and none are expected to be built in the near future.

Control Technology

Current best demonstrated control technology for the open-type electric submerged-arc furance is the fabric filter system. These furnaces account for approximately 86 percent of domestic capacity. Emissions for most of these furnaces are currently controlled with fabric filter systems, and a few are equipped with high-pressure-drop aqueous scrubbers. Existing semi-sealed and closed furnace emissions are all controlled by aqueous scrubbers. No major improvements in the control technology or in processing technology have occurred since the emission standard was proposed in 1974. The installation of available control systems on existing furnaces has generally enabled compliance with State regulations.

Control of particulate emissions from the furnace tapping operations is a problem because many existing facilities do not have adequate hooding. On new furnaces, however, hoods can be designed into the entire system and better fume capture can be expected. Control of fugitive particulate emissions from electric submerged-arc furnaces for ferroalloy production has not been as extensively developed as it has in other segments of the steel industry. No ferroalloy production facilities currently operate with a building fume evacuation system, and no furnaces have been provided with a complete enclosure to reduce fugitive emissions.

Results Achievable with Demonstrated Control Technology

Because no furnaces are currently subject to new source performance standards, no formal Federal compliance tests have been made. Nevertheless, standard EPA test methods have been used to determine compliance with various State particulate emission regulations, and no unique testing problems have occurred. Limited new test data for determining compliance with State emission regulations show that emissions from existing facilities equipped with high-efficiency control equipment ranged from 0.022 to 0.25 kg/MW-h (0.05 to 0.54 lb/MW-h). In general, State and local visible emissions standards are also being met, except during tapping operations at some plants.

Additional Pollutants

Recently, information on the emissions of organic compounds has also been obtained. This information shows that organic compounds, included polynuclear aromatic hydrocarbons, may be emitted from electric submerged-arc furnaces. More data are required to determine the quantity and nature of these emissions to the atmosphere. Emissions of trace metals vary widely among furnaces and depend on the feed materials; however, these emissions are low and are controlled by conventional particulate control equipment. Gaseous emissions are not significant, and high concentrations of carbon monoxide are reduced by flaring the vent gas. Control techniques for carbon monoxide have not been further improved.

Conclusions

Based on this review of the current NSPS, no revision of the standard is planned at this time. This decision is based on:

1. Lack of growth and new construction in the industry.
2. Indication from limited recent test data that the existing standard can be met.

The available particulate matter compliance test data required by some States show that emissions are consistent with NSPS requirements, and although limited, these data support the present standard. Similarly, the data available on furnace emissions indicate that the particulate emission standard is resulting in the installation of control equipment that represents best demonstrated control technology.

All interested parties are invited to comment on this review, the conclusions, and EPA's planned course of action.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 2456 Filed 1-23-81; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 5973]

National Flood Insurance Program; Proposed Flood Elevation Determinations; California, et al.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4 (a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Santa Clara County (unincorporated areas).	Alamitos Creek	25 feet downstream from the intersection of Bertram Road and Alamitos Creek.	*425
		Arroyo Calero	100 feet downstream from the intersection of Harry Road and Arroyo Calero.	*319
		Calabazas Creek	100 feet upstream from the intersection of Prospect Road and Calabazas Creek.	*301
		Coyote Creek	Intersection of Southern Pacific Railroad and center of Coyote Creek	*55
			100 feet upstream from the intersection of Tennant Avenue and Coyote Creek.	*218
			50 feet east of intersection of N. 24th and East San Antonio Street	#1
		East Little Llagas Creek	50 feet upstream from the intersection of Llagas Avenue and East Little Llagas Creek.	*306
		Fisher Creek	80 feet upstream from the intersection of Madrone Avenue and Fisher Creek.	*321
		Fisher Creek Overbank	120 feet upstream from the intersection of Fisher Road (Laguna Avenue) and Fisher Creek Overbank.	*257
		Guadalupe River	500 feet west from intersection of North First Avenue and Nicholson lane.	#1
		Lions Creek	40 feet upstream from the intersection of Tatum Avenue and Lions Creek.	*210
		Llagas Creek	350 feet upstream from the intersection of Pacheo Pass Road and Llagas Creek.	*178
			100 feet upstream from the intersection of Sycamore Avenue and Llagas Creek.	*375
		Llagas Overbank	100 feet upstream from the intersection of Leavesley Road and Llagas Overbank.	*200
		Miller Slough	At the confluence with Ronan Channel	*183
		North Morey Creek	550 feet downstream from the intersection of Kern Avenue and North Morey Creek.	*211
		Permanente Creek	50 feet upstream from the intersection of Permanente Creek and Permanente Road.	*472
		Ronan Channel	At the center of the U.S. Highway 101 (South Valley Freeway)	*183
		Santa Teresa Creek	100 feet downstream from the intersection of Harry Road and Santa Teresa Creek.	*319
		Silver Creek	Intersection of Dover Way and Marmont Way	*112
		South Morey Creek	Intersection of Kern Avenue and South Morey Creek	*211
		Stevens Creek	380 feet upstream from the intersection of Homestead Road and Stevens Creek.	*244
		Upper Penitencia Creek	100 feet north from the intersection of Penitencia Creek Road and Bard Street.	*223
		Uvas Creek	Intersection of Thomas Road and center of Uvas Creek	*206
		West Branch Llagas Creek	100 feet upstream from the intersection of Day Road and West Branch Llagas Creek.	*221
		West Little Llagas	Intersection of Meonterey Road and center of West Little Llagas	*315
		Los Gatos Creek	Intersection of Los Gatos Creek and center of West Mozart Avenue extended.	*253

Maps available for inspection at County Government Center, East Wing Central Permit Office, 7th Floor, 70 West Hedding Street, San Jose, California; Santa Clara Valley Water District, 5750 Alexander Expressway, San Jose, California; Agricultural Conditions and Environmental Health Services Office, 16450 Monterey Road, Morgan Hill, California.

Send comments to Honorable Dan McCorquodale, 70 West Hedding Street, San Jose, California 97110.

Connecticut	Morris, Town, Litchfield County	Bantam Lake	Entire shoreline within the Town of Morris	*904

Maps available for inspection at the Town Clerk's Office, Morris Town Hall, Morris, Connecticut.

Sent comments to Honorable Apley Austin, First Selectman of Morris, Morris Town Hall, Morris, Connecticut 06763.

Illinois	McHenry County (Unincorporated Areas).	Fox River	Intersection of Byrne Drive and Beach Drive	*736
			Intersection of Waterview Avenue and Jones Street	*739
		Nippersink Creek	Intersection of Roselle Street and Maude Place	*747
		North Branch Nippersink Creek	50 feet downstream from center of West Solon Road	*770
		Elizabeth Lake Drain	500 feet upstream from center of State Highway 173	*793
		Dutch Creek	700 feet upstream from center of Riverside Drive	*742
		Dutch Creek-North Branch	50 feet upstream from center of Johnson Road	*748
		Dutch Creek-Branch to Northwest	At confluence with Dutch Creek	*754
		Dutch Creek-North Fork of Branch to Northwest.	50 feet upstream from center of State Highway 31	*825
		Dutch Creek-West Fork of North Fork of Branch to Northwest.	Intersection of Creek and center of Chicago and North Western Railway.	*823

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Slough Creek	50 feet upstream from center of Jankowski Road	*855
		South Branch Slough Creek	600 feet upstream from confluence with Slough Creek	*872
		Silver Creek	50 feet upstream from center of Charles Road	*859
		Silver Creek Tributary No. 1	At confluence with Silver Creek	*859
		Silver Creek Tributary No. 2	At confluence with Silver Creek	*859
		Cary Creek	25 feet upstream from center of Spring Street	*745
Maps available for inspection at Planning Commission Office, 2200 North Seminary, Woodstock, Illinois.				
Send comments to Honorable Richard O. Klemm, County Building, 2200 N. Seminary, Woodstock, Illinois 60098.				
Indiana	(T), Bremen, Marshall County	Yellow River	East 4th Road	*800
			About 300 feet downstreet East 1st Road	
			About 1000 feet upstream A Road	*807
		Armey Ditch	Confluence with Yellow River	*803
			Just upstream North Center Street	*807
			About 0.7 miles upstream North Dogwood Road	*812
		Albert Zeiger Ditch	Confluence with Armey Ditch	*808
			About 300 feet upstream U.S. Route 6 (easternmost crossing)	*812
			About 1400 feet upstream North Dogwood Road	*824
Maps available for inspection at the President's Office, Town Hall, 223, South Center Street, Bremen, Indiana,				
Send comments to Honorable Charles Breery, President of the Town Board, Town of Bremen, Town Hall, 223 South Center Street, Bremen, Indiana 46506.				
Indiana	(C) Greenfield Hancock County	Brandywine Creek	About 490 feet downstream Steele Road	*853
			About 600 feet downstream of County Road 100 South	*859
			Just downstream of Conrail	*866
			About 1000 feet upstream of County Road 100 North	*872
			About 120 feet downstream of Interstate 70	*876
			About 310 feet downstream County Road 300 North	*879
		Little Brandywine Creek	At mouth	*854
			About 400 feet upstream County Road 100 South	*871
			About 400 feet downstream of Conrail	*880
			Just upstream of Conrail	*883
			About 200 feet upstream of County Road 100 North	*894
			About 0.17 mile upstream of County Road 400 east (Near Interstate 70).	*907
		Potts Ditch	At mouth	*864
			About 100 feet downstream of Conrail	*869
			About 200 feet upstream of Conrail	*874
			Just downstream of west 4th Street	*884
			Just downstream of County Road 100 North	*893
			About 0.55 mile upstream of County Road 200 North	*904
		Putte Ditch	At mouth	*862
			About 75 feet downstream of State Route 9	*872
			Just upstream of State Route 9	*879
			About 800 feet upstream of State Route 9	*879
Maps available for inspection at the Building Commissioner's Office, Municipal Building, 110 South State Street, Greenfield, Indiana.				
Send comments to Honorable Keith J. McClamon, Mayor, City of Greenfield, Municipal Building, 110 South State Street, Greenfield, Indiana 46140.				
Kentucky	City of Cynthiana, Harrison County.	South Fork Licking River	Just upstream of Pearl Street extended	*712
			Just upstream of Pleasant Road	*713
		Flat Run	Just upstream of U.S. Highway 62	*730
			Just upstream of Meadow Lane	*742
Maps available for inspection at City Hall, East Pleasant Street, Cynthiana, Kentucky 41031.				
Send comments to Mayor M. Hampton, City Hall, East Pleasant Street, Cynthiana, Kentucky 41031.				
Kentucky	Unincorporated Areas of Franklin County.	Elkhorn Creek	Just upstream of Louisville and Nashville Railroad	*641
			Approximately 400 feet at downstream of County Road 1262	*515
			Just downstream of Peaks Mill Road	*558
			Approximately 60 feet upstream of Old Grand Dad Distillery Road	*654
		North Elkhorn Creek	Approximately 800 feet upstream of South Trimble Memorial Road	*658
		South Elkhorn Creek	Just upstream of the Dam	*654
		Kentucky River (Near Elkhorn Creek).	At the confluence of Elkhorn Creek	*498
		Kentucky River (At downstream of the City of Frankfort).	At Lock and Dam No. 4	*507
			At the confluence of Benson Creek	*508
		Kentucky River (At upstream of the City of Frankfort).	Just downstream of the east-west connector	*509
			Just downstream of I-64 (west bound)	*510
		Benson Creek	Approximately 250 feet upstream of Louisville Road (U.S. 460)	*715
			Just upstream of Kentucky 151	*728
		South Benson Creek	Just upstream of Pea Ridge Road	*617
			Just upstream of Midland Trail (U.S. 60 and 460)	*686
			Just upstream of I-64 east bound	*708
			Approximately 300 feet at upstream of Bridgeport Road	*694
			Approximately 150 feet at downstream of South Benson Road	*728
		Cedar Run	Just upstream of I-64 west bound	*564
			Just upstream of Interstate Highway 64 east bound	*578
Maps available for inspection at Franklin County Courthouse, Judge's Office, 224 St. Clair Street, Frankfort, Kentucky 40601.				
Send comments to Judge Robert T. Harrod, Franklin County Courthouse, 224 St. Clair Street, Frankfort, Kentucky 40601.				
Kentucky	Unincorporated areas of Harrison County.	South Fork Licking River	Just upstream of Keller Dam	*707
			Just upstream of Pleasant Street	*713

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Lair Road	*718
			Just upstream of Old Lair Road	*732
		Flat Run	Just upstream of Church Street	*713
			Just upstream of U.S. Highway 62	*730
		Grays Run	At the confluence of Tributary "B"	*715
		Tributary "B"	Just upstream of the double 4'×12' Box Culvert's Inlet	*719
			Just upstream of U.S. Highways 62 and 27 near intersection with Cornersville Road.	*721
			Just upstream of U.S. Highways 62 and 27 (Uppermost upstream crossing near the junction of U.S. Highways 62 and 27).	*730
Maps available for inspection at Harrison County Courthouse, Main Street, Cynthiana, Kentucky 41031.				
Send comments to Honorable Stephens or Mr. David Moses, Magistrate, Harrison County Courthouse, Main Street, Cynthiana, Kentucky 41031.				
Kentucky	Unincorporated Areas of Scott County.	North Elkhorn Creek	Just upstream of U.S. Highway 227	*776
			Just upstream of Crumbauch Road	*817
		Cane Run	Just upstream of U.S. Highway 460	*778
			Just upstream of U.S. Highway 62	*805
			Just upstream of Etter Road	*819
			Just upstream of U.S. Highway 25 (Lexington Road)	*826
			Just upstream of Kentucky Highway 1963 (Lisle Road)	*839
		Cane Run Tributary	Just upstream of confluence with Cane Run	*828
		Dry Run Creek	Just upstream of confluence with North Elkhorn Creek	*800
			Just upstream of Southern Railway	*815
		Locust Fork	Just upstream of Kentucky Highway 1689	*743
			Just upstream of confluence of Lecomptes Run, Kentucky Highway 1689.	*747
		Eagle Creek	Just upstream of Southern Railway	*780
Maps available for inspection at Scott County Courthouse, Main Street, Georgetown, Kentucky 40324.				
Send comments to Judge Charlie Sutton or Mr. Robert Ward, Administrative Assistant, Scott County Courthouse, Main Street, Georgetown, Kentucky 40324.				
Kentucky	City of Worthington, Greenup County.	Ohio River	At downstream corporate limits	*544
			At upstream corporate limits	*545
Maps available for inspection at City Hall, Ferry Street, Worthington, Kentucky 41183.				
Send comments to Mayor B. C. McCloud, City Hall, Ferry Street, Worthington, Kentucky 41183.				
Kentucky	City of Wurtland, Greenup County...	Ohio River	Entire area within the City of Wurtland	*544
Maps available for inspection at City Hall, 500 Wurtland Avenue, Wurtland, Kentucky 41144.				
Send comments to Mayor E. E. West or Mr. Carl M. Carpenter, Mayor-Pro-tem, City Hall, 500 Wurtland Avenue, Wurtland, Kentucky 41144.				
Louisiana	Town of Duson, Lafayette Parish..	Bayon Que de Tortue	Just upstream of Louisiana Highway 95	*32
			Just downstream of Louisiana Highway 343	*34
		Duson Branch	Just upstream of Southern Pacific Railroad	*34
Maps available for inspection at the Town Hall, 802 First Street, Duson, Louisiana 70529.				
Send comments to Mayor Carroll C. Chiasson, Town Hall, 802 First Street, Duson, Louisiana 70529.				
Louisiana	City of Hammond, Tangipahoe Parish.	Ponchatoula Creek	Just upstream of U.S. Highway 190 Westbound Lane	*39
			Just upstream of North Cherry Street	*43
		Yellow Water River Canal	Just downstream of Dennis Drive extended	*44
		Shallow Flooding Area	At intersection of Pecan Street and Western Avenue	*44
Maps available for inspection at City Hall, 303 East Thomas, Hammond, Louisiana 70404.				
Send comments to Mayor Tom Anderson, or Mr. Richard Seaward, Building Official, City Hall, 303 East Thomas Hammond, Louisiana 70404.				
Louisiana	Town of Haughton, Bossier Parish.	Foxskin Bayou	Just upstream of southern corporate limits	*218
Maps available for inspection at City Hall, 114 West McKinely Street, Haughton, Louisiana 71037.				
Send comments to Mayor Elizabeth O. Sherwin or Mr. Billy Joe Maxey, Mayor Pro-Tem, City Hall, 114 West McKinely Street, Haughton, Louisiana 71037.				
Maryland	Chesapeake City, Town, Cecil County.	Chesapeake and Delaware Canal.	Upstream Corporate Limits	*12
			U.S. Route 213	*12
			Downstream Corporate Limits	*12
Maps available for inspection at the Town Hall, Chesapeake City, Maryland 21915.				
Send comments to Honorable J. William Mason, Mayor of Chesapeake City, Chesapeake City, Maryland.				
Maryland	North East, Town, Cecil County....	Chesapeake Bay (Tidal flooding affecting Northeast Creek).	Downstream Corporate Limits	*12
			Approximately 200' downstream of State Route 272 Southbound (Main Street).	*12
		Northeast Creek	Downstream of State Route 272 Northbound (Mauldin Avenue)	*13
			Approximately 625' upstream of State Route 272 northbound (Mauldin Avenue).	*16
			Just upstream of Conrail tracks	*36
Maps available for inspection at the Town-Hall, North East, Maryland.				
Send comments to Honorable William Ball, Commission President of North East, 102 West Cecil Avenue, North East, Maryland 21901.				
New Jersey	Gibbsboro, Borough, Camden County.	Cooper River	Confluence with Millard Creek	*66
			Downstream of Norcross Road and Dam No. 5	*69
			Upstream Corporate Limits	*70

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Nicholson Branch	Confluence with Millard Creek	*66
			Upstream of Kirkwood Road	*67
			Approximately 900' upstream of Kirkwood Road	*72
Maps available for inspection at the Borough Hall, Kirkwood Road, Gibbsboro.				
Send comments to Honorable John E. White, Mayor, Borough Hall, Kirkwood Road, Gibbsboro, New Jersey 08026.				
New Jersey	Plumsted, Township, Ocean County.	Crosswicks Creek	Downstream Corporate Limits (State Route 537)	*68
			Upstream Conrail	*72
			Upstream Corporate Limits	*74
		Stonyford Brook	Confluence with Crosswicks Creek	*72
			Moorehouse Road	*77
Maps available at the office of the Township Clerk, 31 Main Street, New Egypt, New Jersey.				
Send comments to Honorable James Schroeder, Mayor, 31 Main Street, New Egypt, New Jersey 08533.				
New York	Grand View-On-Hudson, Village, Rockland County.	Hudson River	Entire Shoreline	*8
Maps available for inspection at the Village Hall, 118 River Road, Grand View-On Hudson.				
Send comments to Honorable Lorraine Moscow, Mayor, Village Hall, 118 River Road, Grand View-On Hudson, New York 10960.				
New York	Mexico, Village, Oswego County	Little Salmon River	Downstream Corporate Limits	*347
			Confluence with Black Creek	*349
			Downstream of Dam	*357
			Upstream of Dam	*365
			Downstream of Dam at U.S. Route 104	*374
			Upstream of U.S. Route 104	*389
			Upstream Corporate Limits	*389
		Little Salmon River Tributary 1	Confluence with Little Salmon River	*349
			Downstream of U.S. Route 104	*358
			Downstream of Footbridge	*363
			Upstream Corporate Limits	*370
		Black Creek	Confluence with Little Salmon River	*349
			Downstream of Cemetery road	*350
			Upstream of Academy Street	*354
			Upstream of High School Road	*365
			Upstream of U.S. Route 104	*374
			Upstream of Spring Street	*376
			Upstream Corporate Limits	*377
Maps available for inspection at the Village Offices, 588 Main Street, Village of Mexico.				
Send comments to Honorable Robert C. Gray, Mayor, P.O. Box 26, Mexico, New York 13114.				
New York	Mexico, Town, Oswego County	Black Creek	40' upstream of Munger Hill Road	*377
			2,200' upstream of Munger Hill Road	*377
			2,600' upstream of Munger Hill Road	*380
			3,525' upstream of Munger Hill Road	*390
			1,530' downstream of confluence with Black Creek Tributary 1	*397
			Confluence with Black Creek Tributary 1	*400
			40' upstream of Pumphouse Road	*401
			3,760' upstream of Pumphouse Road	*402
			200' downstream of State Route 3 (Downstream crossing)	*403
			60' upstream of State Route 3 (Downstream crossing)	*408
			2,600' upstream of State Route 3 (Downstream crossing)	*411
			50' downstream of State Route 3 (Upstream crossing)	*418
			100' upstream of State Route 3 (Upstream crossing)	*427
			1,370' upstream of State Route 3 (Upstream crossing)	*428
			40' downstream of Gillette Road	*429
			50' upstream of Gillette Road	*435
			50' downstream of Pople Ridge Road	*435
			50' upstream of Pople Ridge Road	*443
			3,330' upstream of Pople Ridge Road	*443
			3,420' upstream of Pople Ridge Road	*453
		Black Creek Tributary 1	Confluence with black Creek	*400
			30' downstream of Larson Road	*401
			30' upstream of Larson Road	*404
			30' upstream of Pumphouse Road (Downstream crossing)	*406
			30' downstream of Pumphouse Road (Upstream crossing)	*406
			30' upstream of Pumphouse Road (Downstream crossing)	*412
			1,490' upstream of Pumphouse Road (Upstream crossing)	*417
			2,580' upstream of Pumphouse Road (Upstream crossing)	*423
		Little Salmon River	Confluence with Lake Ontario	*249
			800' upstream of confluence with Lake Ontario	*251
			30' downstream of State Route 104B	*252
			1,100' upstream of State Route 104B	*253
			30' upstream of State Route 16	*254
			1,200' upstream of State Route 16	*260
			3,500' upstream of State Route 16	*270
			4,600' upstream of State Route 16	*280
			5,680' upstream of State Route 16	*290
			6,350' upstream of State Route 16	*300
			700' downstream of George Road	*310
			100' upstream of George Road	*319
			1,750' upstream of George Road	*325
			4,170' upstream of George Road	*335
			6,520' upstream of George Road	*345
			8,150' upstream of George Road	*347

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			2,400' downstream of the Dam	*370
			1,125' downstream of the Dam	*375
			600' downstream of the Dam	*380
			130' downstream of the Dam	*385
			30' upstream of the Dam	*392
			570' upstream of the Dam	*392
			850' upstream of the Dam	*395
			1,410' upstream of the Dam	*400
			30' downstream of Hurlbut Road	*403
			30' upstream of Hurlbut Road	*412
			460' upstream of Hurlbut Road	*412
	Maps available for inspection at the Town Offices, South Jefferson Street, Mexico, New York 13114.			
	Send comments to Honorable Mark Gibbs, Town Supervisor of Mexico, South Jefferson Street, Mexico, New York 13114.			
New York	Minetto, Town, Oswego County	Oswego River	Downstream Corporate Limits	*297
			Downstream Dam	*298
			Upstream Dam	*314
			Upstream Corporate Limits	*316
		Benson Creek	Upstream Conrail First downstream crossing	*305
			Upstream Worden Road	*313
			Approximately 250' downstream of Minetto-Lysander Road	*320
	Maps available for inspection at the Town Hall, Route 48, Minetto.			
	Send comments to Honorable William Scheureman, Town Supervisor, Box D, Minetto, New York 13115.			
New York	Newfane, Town, Niagara County	Eighteenmile Creek	Confluence with Lake Ontario	*249
			Downstream of Dam No.1	*256
			Upstream of Dam No. 1	*303
			Ide Road	*304
			100' downstream of Ewings Road	*314
			100' upstream of Ewings Road	*317
			Downstream side of Dam No. 2	*319
			Upstream side of Dam No. 2	*331
			Condren Road	*339
			5,000' upstream of Condren Road	*345
			100' downstream of Jacques Road	*347
			400' upstream of Jacques Road	*350
			Downstream footbridge	*355
			Corporate Limits	*356
		Keg Creek	Confluence with Lake Ontario	*249
			Approximately 750' downstream of State Route 18	*254
			25' downstream of State Route 18	*256
			State Route 18	*268
		Hopkins Creek	Confluence with Lake Ontario	*249
			125' downstream of State Route 18	*254
			150' upstream of State Route 18	*260
			100' downstream of Coomer Road	*263
			75' upstream of Coomer Road	*279
		Each Branch Eighteenmile Creek	Confluence with Eighteenmile Creek	*354
			Corporate Limits	*358
			100' downstream of Day Road	*370
			100' upstream of Day Road	*373
			7,500' upstream of Day Road	*375
	Maps available for inspection at the Town Hall, 2896 Transit Road, Newfane.			
	Send comments to Honorable James W. Kramer, Supervisor, Town Hall, 2896 Transit Road, Newfane, New York 14108.			
New York	New Haven, Town, Oswego County.	Catfish Creek	Confluence with Lake Ontario	*249
			2,150' upstream of confluence with Lake Ontario	250
			1,330' downstream of the Dam	*260
			540' downstream of the Dam	*270
			80' downstream of the Dam	*280
			10' upstream of the Dam	*292
			10' upstream of County Road 6	*293
			1,200' upstream of County Road 6	*295
			1,700' upstream of County Road 6	*296
		Otter Branch	Confluence with Lake Ontario	*249
			900' upstream of confluence with Lake Ontario	*250
			2,500' upstream of confluence with Lake Ontario	*260
			2,400' downstream of North Road	*270
			1,570' downstream of North Road	*280
			700' downstream of North Road	*290
			Downstream side of North Road	*297
	Maps available for inspection at the Town Assessor's Office, Stone Road, Town of New Haven.			
	Send comments to Honorable Gordon Schipper, Town Supervisor, R.D. 2, Mexico, New York 13114.			
New York	Oswego, Town, Oswego County	Lake Ontario	Entire Shoreline	*249
		Camp Creek	Confluence with Lake Ontario	249
			550' upstream from confluence with Lake Ontario	*259
			Upstream from West Lake Road	*269
			Upstream of confluence of Camp Creek Tributary	*270
		Camp Creek Tributary	Confluence with Camp Creek	*270
			2,350' upstream from confluence of Camp Creek	*281
			Downstream from California Road	*288

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream from California Road	*297
			Upstream from U.S. Route 104A	
	Maps available for inspection at the Town Hall, Johnson Road, Oswego.			
	Send comments to Honorable Robert E. Zagame, Town Supervisor of Oswego, R.D. 6, Oswego, New York 13126.			
New York	Sandy Creek, Town Oswego County.	South Pond tributary	Wafels Road	*249
			450' downstream of Tryon Road	251
			50' downstream of Tryon Road	*254
			30' upstream of Tryon Road	*258
	Maps available for inspection at the Town Clerk's residence, 9128 East First Street, Sandy Creek, New York.			
	Send comments to Honorable Darrel Keyhoe, Town Supervisor, Sandy Creek, New York 13145.			
New York	Tarrytown, Village, Westchester County.	Sunnyside Brook	Confluence with Hudson River	*8
			Approximately 455' upstream confluence with Hudson River	*11
			Approximately 175' downstream of downstream crossing of West Sunnside Lane.	*31
			Approximately 95' upstream of downstream crossing of West Sunnyside Lane.	*47
			Upstream crossing of West Sunnyside Lane	*59
			Approximately 38' upstream of Private Road which is 300' upstream of upstream crossing of West Sunnyside Lane.	*91
			Approximately 175' upstream of Private Road	*98
			Approximately 426' upstream of Private Road and 144' downstream of footbridge.	*110
			At a footbridge 280' downstream of Old Croton Aqueduct	*120
			Approximately 24' downstream of Old Croton Aqueduct	*134
			Upstream of Old Croton Aqueduct	*151
			Approximately 52' downstream of Sunnyside Lane	*388
			Sunnyside Land and Corporate Limits	*193
		Hudson River	Entire Shoreline	*8
	Maps available at the Village Administrator's Office, Village Hall, 21 Wildaey Street, Tarrytown.			
	Send comments to Honorable Patrick A. Pilla, Mayor, Village Hall, 21 Wildey Street, Tarrytown, New York 10591.			
New York	West Haverstraw, Village, Rockland County.	Hudson River	Backwater affecting northeast corner of community adjacent to Grassy Point Road.	*8
		Minisceongo Creek	Downstream Corporate Limits	*13
			Approximately 650' upstream of Samsondale Avenue	*23
			Approximately 1,460' upstream of Samsondale Avenue	*33
			Upstream Conrail	*42
			Approximately 300' downstream of U.S. Route 9W and 202	*53
			Upstream U.S. Routes 9W & 202	*63
			Approximately 860' upstream of U.S. Routes 9W & 202	*73
			Approximately 1,390' upstream of U.S. Routes 9W & 202	*83
			Approximately 1,880' upstream of U.S. Routes 9W & 202	*93
			Approximately 2,280' upstream of U.S. Routes 9W & 202	*103
			Approximately 2,675' upstream of U.S. Routes 9W & 202	*113
			Downstream of 1st Dam	*123
			Upstream of 1st Dam	*140
			Upstream of Main Street	*153
			Downstream of 2nd Dam	*166
			Upstream of 2nd Dam	*179
			Upstream Corporate Limits	*179
	Maps available at the Village Hall, Garnerville, New York.			
	Send comments to Honorable Edward Zugibe, Mayor, Village Hall, Garnerville, New York 10923.			
aPennsylvania	Abington, Township, Lackawanna County.	Ackerly Creek	Upstream of Ackerly Road	*1,068
			Downstream of Conrail culvert	*1,075
			Upstream of Conrail crossing approximately 750' upstream of downstream Corporate Limits.	*1,087
			400' upstream of Conrail culvert	*1,100
			Downstream of Oakford Glen Dam	*1,113
			Upstream of Oakford Glen Dam	*1,134
			Downstream of Oakford Glen Road	*1,144
			Upstream of Second Golf Course Bridge	*1,155
			Approximately 40' downstream of Abington Road	*1,168
	Maps available for inspection at the Township Offices, Abington, Pennsylvania.			
	Send comments to Honorable Henry Belin, IV, Chairman of the Abington Board of Supervisors, Waverly, Pennsylvania 18471.			
Pennsylvania	Bethel, Township, Lebanon County.	Little Swatara Creek	Approximately 1,550' upstream of Legislative Route 38002	*447
			Upstream Corporate Limits	*453
		Monroe Creek	Downstream Corporate Limits	*452
			Upstream Township Route 740	*458
			Downstream Legislative Route 38049	*469
			Downstream Lake Weiss Dam	*474
			Upstream Lake Weiss Dam	*482
			Downstream Lake Strause Dam	*493
			Approximately 2,770' upstream Lake Strause Dam	*503
		Beach Run	Confluence with Deep Run	*437
			Upstream Pennsylvania Route 343	*448
			Upstream U.S. Route 22	*456
			Upstream Main Street	*461
			Upstream Legislative Route 38050	*470
			Upstream Township Route 504	*477

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 420' upstream Township Route 504	*479
		Deep Run	Confluence with Beach Run	*437
			Upstream U.S. Route 22	*442
			Upstream Township Route 601	*459
			Upstream Main Street	*464
			Downstream First Private Road	*476
			Downstream Second Private Road	*482
			Approximately 280' upstream of Second Private Road	*484
Maps available for inspection at the Township Building, Bethel, Pennsylvania.				
Send comments to Honorable Mark Buffamoyer, Chairman of the Bethel Board of Supervisors, R. D. 2, Fredericksburg, Pennsylvania 17026.				
Pennsylvania	Berwick, Township, Adams County.	Beaver Creek	Berwick/Hamilton Corporate Limits	
			Downstream Berwick/Abbottstown Corporate Limits	
			*478	
			*487	
			Upstream Berwick/Abbottstown Corporate Limits	*517
			Approximately 1,200' upstream of the downstream Country Club Road Bridge.	*527
			Approximately 2,200' upstream of the downstream Country Club Road Bridge.	*539
			Approximately 3,200' upstream of the downstream Country Club Road Bridge.	*552
			Downstream of the upstream Country Club Road Bridge	*568
			Approximately 800' upstream of the upstream Country Club Road Bridge.	*580
			Approximately 1,400' upstream of the upstream Country Club Road Bridge.	*591
			Approximately 200' downstream of Maple Grove Road Bridge	*602
			Maple Grove Road Bridge	*614
		Spring Run	Downstream Corporate Limits	*509
			Upstream of Access Road Bridge, approximately 600' upstream of downstream Corporate Limits.	*518
			Upstream of Private Road Bridge, approximately 1,850' upstream of downstream Corporate Limits.	*528
			Approximately 1,000' upstream of downstream Corporate Limits	*537
			Upstream of State Route 194 Bridge	*548
			Approximately 1,000' upstream of State Route 194 Bridge	*557
			Approximately 2,000' upstream of State Route 194 Bridge	*571
			Approximately 500' downstream of Maple Grove Road Bridge	*583
			Upstream side of Maple Grove Road Bridge	
			*595	
		Pine Run Tributary A	Downstream Corporate Limits	*522
			Approximately 1,200' upstream of the downstream Corporate Limits	*534
			Approximately 2,200' upstream of the downstream Corporate Limits	*545
			Approximately 3,000' upstream of the downstream Corporate Limits	*554
			Approximately 3,800' upstream of the downstream Corporate Limits	*561
		Pine Run Tributary B	Downstream Corporate Limits	*537
			Upstream of Private Road Bridge located approximately 900' upstream of the downstream Corporate Limits.	*543
			Upstream of Access Road Bridge located approximately 1,250' upstream of the downstream Corporate Limits.	*548
			Approximately 400' downstream of State Route 94 Bridge	*553
			Upstream Corporate Limits	*559
Maps available for inspection at the Township Meeting Hall, Greensprings Gun Hall, Berwick, Pennsylvania.				
Send comments to Honorable Maxine Garrett, Chairwoman of the Berwick Board of Supervisors, R. D. 5, Box 200, Hanover, Pennsylvania 17331.				
Pennsylvania	Caln, Township Chester County	East Branch Brandywine Creek	Downstream Corporate Limits	*242
			State Route 282	*245
			U.S. Route 30 (Downington Coatesville by-pass) (Upstream side)	*249
			Upstream Corporate Limits	*252
		Beaver Creek	Downstream Lloyd Avenue (Upstream side)	*250
			Confluence of Valley Run	*259
			Approximately 1,500' upstream confluence of Valley Run	*266
			Approximately 1,000' downstream U.S. Route 30 (Downington-Coatesville by-pass).	*274
			Approximately 240' downstream U.S. Route 30 (Downington-Coatesville by-pass).	*282
		Valley Run	Confluence with Beaver Creek	*259
			Bondsville Road (Downstream side)	*277
			Private Road (Upstream side)	*284
			Municipal Drive (Upstream side)	*297
			Bailey Road (Upstream side)	*303
			Bailey Sheaf Road (Downstream side)	*318
			Loomis Avenue (Upstream side)	*322
			Seltzer Avenue (Upstream side)	*330
			Approximately 950' upstream of Seltzer Avenue	*336
Maps available for inspection at the Township Building, Municipal Drive, Caln, Pennsylvania.				
Send comments to Honorable Samuel V. Moore, President of the Caln Board of Commissioners, P.O. Box 253, Thorndale, Pennsylvania 19372.				
Pennsylvania	Carbondale, Township Lackawana County.	Lackawanna River	Downstream Corporate Limits	*980
			Meredith Street (Upstream side)	*987
			Approximately 1,400' upstream Meredith Street	*997
			Upstream Corporate Limits	*1,005
Maps available for inspection by contacting Mr. Cavage, Carbondale Township Supervisor at (717) 282-5808.				
Send comments to Honorable Louis Rogari, Chairman of the Board of Supervisors, 206 Gordon Avenue, Carbondale, Pennsylvania 18407.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Chanceford, Township York County.	Susquehanna River	Downstream Corporate Limits	
			Safe Harbor Dam (Upstream)	
			Upstream Corporate Limits	*190
				*227
				*230
		North Branch Muddy Creek	Confluence of Tributary 1	*412
			L. R. 66012 (downstream)	*422
			Maryland and Pennsylvania Railroad bridge, approximately 380' upstream of L.R. 66012 (Upstream).	*430
			Maryland and Pennsylvania Railroad bridge, approximately 1,650' upstream of L.R. 66012 (Upstream).	*439
			Maryland and Pennsylvania Railroad bridge, approximately 3,900' upstream of L.R. 66012 (Downstream).	*446
			T. R. 573 (Upstream)	*470
			Confluence of Carter Creek	*475
			L. R. 66057 (Upstream)	*482
			Private Drive approximately 3,300' upstream of L. R. 66057 (Upstream).	*491
			Approximately 4,250' downstream of Corporate Limits	*501
			Approximately 2,250' downstream of Corporate Limits	*512
			Upstream Corporate Limits	*530
		Otter Creek	Kline Road (Upstream)	*309
			Legislative Route 66059 (Downstream)	*327
			Mill Road, approximately 2,200' upstream from L. R. 60059	*344
			L. R. 66013 (Upstream)	*351
			Approximately 1,350' upstream of L. R. 66013	*360
		Pine Run	Downstream Corporate Limits	*552
			Private Road (Upstream)	*558
			Maryland and Pennsylvania Railroad (Upstream)	*572
			L. R. 66055 (Upstream)	*587
		Carter Creek	Confluence with North Branch Muddy Creek	*475
			L. R. 66057 (Upstream)	*483
			T. R. 659 (Upstream) Approximately 1,850' upstream of L. R. 66057	*507
			T. R. 684 approximately 4,150' upstream of L. R. 66057 (Upstream)	*535
			T. R. 684 approximately 5,850' upstream of L. R. 66057 (Upstream)	*562
			T. R. 684 approximately 7,680' upstream of L. R. 66057 (Upstream)	*584
			T. R. 684 approximately 9,100' upstream of L. R. 66057 (Upstream)	*602
			Private Drive (Upstream)	*609
			L. R. 66116 (Upstream)	*616
			Approximately 90' upstream of L. R. 66116	*620
		Tributary 1	Confluence with North Branch Muddy Creek	*412
			Private Drive approximately 480' upstream of confluence with North Branch Muddy Creek (Upstream).	*417
			Private Drive approximately 1,400' upstream of confluence with North Branch Muddy Creek.	*435
			L. R. 66058 (Downstream)	*452
			L. R. 66058 (Upstream)	*461
			Duff Road approximately 1,300' upstream of L. R. 66053 (Upstream)	*476
			Duff Road approximately 3,200' upstream of L. R. 66058 (Upstream)	*512
			Private Road approximately 4,700' upstream of L. R. 66058 (Upstream).	*542
			Approximately 1,925' downstream of T. R. 669	*568
			T. R. 669 (Upstream)	*615
		Mill Branch	Confluence with Otter Creek	*399
			Pickle Road (Upstream)	*403
			Approximately 4,250' upstream of Pickle Road	*463
			Shaw School Road (Downstream)	*484
			Footbridge 60' upstream of Shaw School Road (Upstream)	*487
			Approximately 3,610' upstream of Shaw School Road	*527
			Pamraning Road (Upstream)	*567
			Dettingers Road (Upstream)	*592
	Maps available for inspection at the Township Building, Chanceford, Pennsylvania.			
	Send comments to Honorable Denton R. Shaull, Chairman of the Chanceford Board of Supervisors, R.D. 2, Felton, Pennsylvania 17322			
Pennsylvania	Cumberland, Township, Adams County.	Rock Creek	Approximately 100' upstream of U.S. Route 15	*422
			Approximately 200' upstream of U.S. Route 140	*432
			Approximately 1,400' upstream of U.S. Route 140	*443
			Approximately 2,000' downstream of State Route 116	*473
			Downstream U.S. Business Route 15	*482
			Confluence with Rock Creek Tributary 3	*490
		Rock Creek Tributary 3	Upstream Miller Road (T 508)	*492
			Upstream Put Road	*506
		Marsh Creek	Downstream Dam	*439
			Upstream U.S. Business Route 15	*446
			Downstream Red Rock Road	*458
			Downstream Legislative Route 01026	*467
	Maps available for inspection at the Township Municipal Building, Cumberland, Pennsylvania.			
	Send comments to Honorable H. Wayne Cluck, Chairman of the Cumberland Board of Supervisors, R.D. 3, Gettysburg, Pennsylvania 17325.			
Pennsylvania	Fell, Township, Lackawanna County.	Lackawanna River	Downstream Corporate Limits	*1,096
			Upstream of Morse Avenue	*1,130
			Upstream of Main Street (State Route 171)	*1,136
			Approximately .43 mile upstream of Main Street (State Route 171)	*1,161
		Wilson Creek	Confluence with Lackawanna River	*1,133
			Upstream of Conrail	*1,142

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of Delaware and Hudson Railroad	*1,149
			Upstream of Midland Street	*1,153
			Approximately .15 mile upstream of Midland Street	*1,177
			Approximately .3 mile upstream of Midland Street	*1,201
			Downstream of Main Street (State Route 171)	*1,221

Maps available for inspection at the Fell Township Building, Fell, Pennsylvania.

Send comments to Honorable Edward T. Scotchlas, Chairman of the Fell Board of Supervisors, Four Lord Avenue, Simpson, Pennsylvania 18407.

Pennsylvania	Greenfield, Township, Blair County.	Frankstown Branch Juniata River.	Downstream Corporate Limits	*1,053
			Approximately 1,900' upstream of downstream Corporate Limits	*1,063
			Confluence of Pole Cat Run	*1,075
			Approximately 4,080' downstream of Private Road	*1,087
			Private Road	*1,119
			Walnut Street	*1,129
			Approximately 2,000' upstream of Walnut Street	*1,140
			Approximately 80' downstream of confluence of South Poplar Run	*1,147
			Approximately 1,300' downstream of Township Route 312	*1,155
		South Poplar Run	Confluence with Frankstown Branch Juniata River	*1,147
			Approximately 125' upstream of Conrail	*1,156
			Approximately 25' upstream of U.S. Route 220	*1,167
			Approximately 1,190' upstream of U.S. Route 220	*1,179
			Approximately 25' downstream of Township Route 310	*1,192
			Approximately 1,350' upstream of Township Route 310	*1,210
			Approximately 400' downstream of Legislative Route 07002	*1,231
			Approximately 1,600' downstream of Legislative Route 07042 extended.	*1,386
			On downstream side of Private Road, approximately 1,240' downstream of Legislative Route 07042 extended.	*1,400
			Approximately 80' upstream of Legislative Route 07042 extended	*1,429
			Approximately 2,490' downstream of Legislative Route 07002	*1,153
			Approximately 680' downstream of Legislative Route 07002	*1,489
			Upstream side of Legislative Route 07002	*1,504
			Approximately 920' upstream of Legislative Route 07002	*1,534
			Approximately 120' downstream of Township Route 506	*1,561
			Approximately 130' upstream of Township Route 506	*1,574
			Approximately 1,100' upstream of Township Route 506	*1,604
			Approximately 2,050' upstream of Township Route 506	*1,634
			Approximately 2,670' upstream of Township Route 506	*1,654
			Approximately 3,750' upstream of Township Route 506	*1,684
			Approximately 4,220' upstream of Township Route 506	*1,704
			Approximately 860' downstream of confluence of Big Lick Branch	*1,734
			Approximately 50' upstream of confluence of Big Lick Branch	*1,764
			Approximately 480' upstream of confluence of Big Lick Branch	*1,793
		Carson Run	Confluence with South Poplar Run	*1,489
			Approximately 945' upstream of Confluence with South Poplar Run	*1,515
			Upstream of first Private Road	*1,549
			Approximately 800' upstream of first Private Road	*1,575
			Upstream second Private Road	*1,598
			Approximately 200' upstream of second Private Road	*1,604

Maps available at the Greenfield Township Building, East Freedom, Pennsylvania.

Send comments to Honorable Raymond Mountain, Chairman of the Greenfield Board of Supervisors, R. D. 1, East Freedom, Pennsylvania 16637.

Pennsylvania	Heidelberg, Township, York County.	Codorus Creek	Downstream Corporate Limits	*464
			York Road (downstream side)	*477
			Township Route 374 (upstream side)	*492
			Legislative Route 66007 (upstream side)	*501
			Township Route 377 (upstream side)	*509
		Oil Creek	Confluence with Codorus Creek	*464
			Private Drive approximately 4,800' upstream of Corporate Limits (upstream side).	*475
			Moulstown Road (upstream side)	*485
			Legislative Route 66009 (upstream side)	*498
			Maryland and Pennsylvania Railroad bridge (downstream side)	*508
			Legislative Route 66007 (upstream side)	*515
			Township Route 341 (downstream side)	*531
			Upstream Corporate Limits	*536
		Gitts Run	Approximately 380 feet downstream of Maryland and Pennsylvania Railroad bridge.	*546
			Maryland and Pennsylvania Railroad Bridge (upstream)	*557

Maps available for inspection at the Heidelberg Township Municipal Building, Porter Fire Hall.

Send comments to Honorable Kervin C. Hoover, Chairman of the Heidelberg Board of Supervisors, R. D. 3, Spring Grove, Pennsylvania 17362.

Pennsylvania	Hughesville, Borough, Lycoming County.	Muncy Creek	Downstream Corporate Limits	*562
			Upstream Corporate Limits	*563

Maps available for inspection at the Borough Building, 53 West Water Street, Hughesville, Pennsylvania.

Send comments to Honorable Pauline Montgomery, Mayor of Hughesville, 53 West Water Street, Hughesville, Pennsylvania 17737.

Pennsylvania	Jackson, Township, York County.	Codorus Creek	Hershey Road (Upstream)	*444
			Dam (Upstream)	*458
			Confluence with Oil Creek	*464
		Oil Creek	Confluence with Codorus Creek	*464
			Moulstown Road (Upstream)	*468
		Little Conewago Creek	Downstream Corporate Limits	*411
			Confluence with Paradise Creek	*417

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Pine Road (Upstream)	*443
			U.S. Route 30 (Upstream)	*450
			Grant Road (Upstream)	*460
			Airport Road (Upstream)	*469
			LaBott Road (Downstream)	*479
			Approximately 2,050' upstream of LaBott Road	*489
			Approximately 3,150' upstream of LaBott Road	*499
			Approximately 3,900/upstream of LaBott Road	*509
			Roths Church Road (Upstream)	*521
		Paradise Creek	Lefever Road (Upstream)	*427
			East Berlin Road (Upstream)	*437
			Shady Dell Road (Upstream)	*445
		Tributary 1	Confluence with Little Conewago Creek	*459
			Airport Road (Upstream)	*466
			Main Street (Upstream)	*473
	Maps available for inspection at the Township Building, Roth Church Road, Jackson, Pennsylvania.			
	Send comments to Honorable David A. Sprenkle, Chairman of the Jackson Board of Supervisors, R.D. 1, Spring Grove, Pennsylvania 17362.			
Pennsylvania	Jackson, Township, Lebanon County.	Tulpehocken Creek	Township Route 646 (Upstream)	*417
			Township Route 618 (Upstream)	*426
			Township Route 578 (Upstream)	*440
			Township Route 614 (Upstream)	*450
			Township Route 573 (Upstream)	*459
			Township Route 560 (Upstream)	*467
			Approximately 120' upstream U.S. Route 422	*482
			Upstream Corporate Limits	*485
		Owl Creek	Confluence with Tulpehocken Creek	*427
			Township Route 500 (Upstream)	*438
			Approximately 3,000' upstream Township Route 500	*450
		Tributary A	Confluence with Tulpehocken Creek	*426
			Conrail (Upstream)	*432
			Approximately 1,080' upstream Township Route 405	*433
		Tributary B	Confluence with Tulpehocken Creek	*451
			Township Route 500 (Upstream)	*461
			U.S. Route 422 (Upstream)	*470
			Jackson Avenue (Upstream)	*478
			Approximately 2,300' upstream Jackson Avenue	*509
		Tributary C	Confluence with Tulpehocken Creek	*467
			U.S. Route 422 (Upstream)	*472
			Township Route 489 (Upstream)	*485
			Approximately 3,680' upstream Township Route 489	*499
		Tributary D	Confluence with Owl Creek	*444
			Approximately 1,140' upstream of confluence with Owl Creek	*447
	Maps available for inspection at the Jackson West Elementary School, Jackson, Pennsylvania			
	Send comments to Honorable Ronald Krall, Chairman of the Jackson Board of Supervisors, 490 Lincoln Avenue, Myerstown, Pennsylvania 17042.			
Pennsylvania	Mayfield, Borough, Lackawanna County.	Lackawanna River	Downstream Corporate Limits	*948
			Poplar Street (Downstream)	*952
			Approximately 450' upstream of Poplar Street	*961
			Confluence of Powderly Creek	*968
			800' downstream of upstream Corporate Limits	*976
			Upstream Corporate Limits	*980
	Maps available for inspection at the Borough Building, Mayfield, Pennsylvania.			
	Send comments to Honorable Alexander Chelik, Mayor of Mayfield, 703 Plank Road, Mayfield, Pennsylvania 18433.			
Pennsylvania	North Codorus, Township York County.	Codorus Creek	Hershey Road (Upstream)	*444
			State Route 116 approximately 5,000' upstream of Hershey Road (Upstream).	*452
			Chessie System approximately 7,300' upstream of Hershey Road (Upstream).	*461
			L. R. 66048 (Upstream)	*465
			State Route 116 approximately 6,400' upstream of L. R. 66048 (Upstream).	*480
			T.R. 374 (Upstream)	*492
			Chessie System approximately 100' upstream of L. R. 66007 (Upstream).	*501
			T.R. 377 (Upstream)	*509
		South Branch Codorus Creek	Downstream Corporate Limits	*385
			Commonwealth of Pennsylvania Railroad (Upstream)	*388
			Approximately 1,900' upstream of Commonwealth of Pennsylvania Railroad.	*390
		Tributary No. 1	Confluence with Codorus Creek	*459
			State Route 116 (Upstream)	*465
			Dam (Downstream)	*488
			Dam (Upstream)	*529
			Private Road (Downstream)	*532
			Private Road (Upstream)	*548
			Approximately 1,200' upstream of Private Road	*558
			Approximately 1,700' upstream of Private Road	*568
			Approximately 2,500' upstream of Private Road	*578
			Approximately 3,100' upstream of Private Road	*588
			L. R. 66007 (Upstream)	*595
		Tributary No. 2	Confluence with South Branch Codorus Creek	*467
			Junction Road (Upstream)	*476
			Approximately 2,550' upstream of Junction Road	*486

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			T. R. 444 (Upstream)	*495
			Spanglers Road (Downstream)	*511
			Spanglers Road (Upstream)	*514
			Strickhousers Road (Upstream)	*523
			Brush Valley Road (Upstream)	*534
			Approximately 1,700' upstream of Brush Valley Road	*544
			Approximately 3,000' upstream of Brush Valley Road	*554
			Approximately 4,600' upstream of Brush Valley Road	*564
			T. R. 412 (Upstream)	*575
			Buffalo Valley Road (Upstream)	*585
Maps available for inspection at the Township Building, Stovers Town Road, North Codorus, Pennsylvania.				
Send comments to Honorable Lowell D. Wakeland, Chairman of the North Codorus Board of Supervisors, R. D. 10, York, Pennsylvania 17404.				
Pennsylvania	North Whitehall, Township Lehigh County.	Lehigh River	Downstream Corporate Limits	*303
			Old Laury Dam (Downstream)	*314
			Old Laury Dam (Upstream)	*318
			State Route 145 (Upstream)	*331
			Treichlers Dam (Downstream)	*334
			Treichlers Dam (Upstream)	*345
Confluence of Rockdale Creek:				*347
			Upstream Corporate Limits	*351
		Jordan Creek	Downstream Corporate Limits	*356
			Kernsville Road (Upstream)	*362
			Approximately 1,500' upstream of Kernsville Road	*367
			Township Route 593 (Upstream)	*371
		Coplay Creek	Downstream Corporate Limits	*372
			Driveway approximately 470' downstream of Township Route 695 (Upstream).	*379
			Township Route 695 (Upstream)	*383
			Hill Street (Upstream)	*388
			Upstream Abandoned Bridge approximately 1,940' upstream of Hill Street (Downstream).	*392
			Walnut Street (Upstream)	*396
			Willow Street (Upstream)	*402
			Driveway approximately 5,000' Upstream of Willow Street (Upstream)	*410
			Driveway approximately 1,800' downstream of Golf Course Road (Upstream).	*414
			Golf Course Road (Upstream)	*426
			Coffeetown Road (L.R. 39012) (Downstream)	*437
			Approximately 1,500' upstream of Coffeetown Road (L.R. 39012)	*447
			Approximately 2,100' upstream of Coffeetown Road (L.R. 39012)	*452
			Levans Road (Downstream)	*460
			Levans Road (Upstream)	*465
			Approximately 1,230' upstream of Levans Road	*474
			Approximately 1,480' downstream of Township Route 691	*484
			Township Route 691 (upstream)	*496
			Approximately 860' upstream of Township Route 691	*504
			Sand Springs Road (Downstream)	*514
			Township Route 674 (Downstream)	*521
			Township Route 674 (Upstream)	*525
			Approximately 950' downstream of upstream crossing of Township Route 674.	*535
			Upstream crossing of Township Route 674 (Downstream)	*542
			Upstream crossing of Township Route 674 (Upstream)	*546
			Excelsior Road (Upstream)	*556
			State Route 329 (Upstream)	*569
Maps available for inspection at the North Whitehall Township Building, R. D. 1, Coplay, Pennsylvania.				
Send comments to Honorable Paul F. Kuhns, Chairman of the North Whitehall Board of Supervisors, R. D. 1, Coplay, Pennsylvania 18037.				
Pennsylvania	Penn, Township York County	Oil Creek	Downstream Corporate Limits	*536
			Upstream side of Dam	*543
			Approximately 60' downstream of Wilson Avenue	*550
			Upstream side of Wilson Avenue	*556
			Upstream side of Ridge Avenue	*563
			Upstream side of Chessie System	*568
			Approximately 440' downstream of York Road	*578
			Upstream side of York Road	*584
			Upstream side of Park Street	*586
			Approximately 50' upstream of Breezewood Drive	*592
		Plum Creek	Downstream Corporate Limits	*558
			Upstream side of Frederick Street	*562
			Approximately 650' downstream of confluence of Tributary 1	*572
			Approximately 175' upstream of confluence of Tributary 1	*576
		Gitts Run	Confluence with Oil Creek	*537
			Upstream side of Karen Lane	*545
			Downstream side of Maryland and Pennsylvania Railroad Bridge	*547
			Upstream side of Maryland and Pennsylvania Railroad Bridge	*557
			Upstream side of Township Route 338	*560
			Upstream side of Fame Avenue	*568
			Approximately 340' downstream of Moulstown Road	*575
			Upstream side of Moulstown Road	*579
		Tributary	Confluence with Plum Creek	*575
			Upstream side of Westminister Avenue	*582
			Upstream side of Sherman Street	*588
			Upstream side of Earl Street	*592
			Upstream side of Baugher Drive	*597

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream side of Park Heights Boulevard	*609
			Approximately 490' upstream of Park Heights Boulevard	*618
			Approximately 970' upstream of Park Heights Boulevard	*629
			Approximately 310' downstream of Beck Mill Road	*639
			Downstream Beck Mill Road	*646
			Upstream side of Beck Mill Road	*651
		Slagle Run	Downstream Corporate Limits	*537
			Upstream side of Carlisle Street	*543
			Approximately 2,540' upstream of Carlisle Street	*551
			Third downstream Corporate Limits	*565
			Upstream side Flickinger Road	*573
	Maps available for inspection at the Penn Township Municipal Building, 1016 York Street, Hanover, Pennsylvania.			
	Send comments to Honorable Eugene V. Fuhrman, Commission President of Penn, 1016 York Street, Hanover, Pennsylvania 17331.			
Pennsylvania	Schwenksville, Borough Montgomery County.	Perkiomen Creek	Downstream Corporate Limits	*141
			Confluence of Mine Run	*144
			Upstream Park Avenue	*146
			Upstream Corporate Limits	*147
	Maps available for inspection at the residence of Ms. Patricia Katona, Borough Secretary, 808 Mountain View Avenue, Schwenksville, Pennsylvania.			
	Send comments to Honorable Elizabeth M. Shellenberger, Council President of Schwenksville, 729 Main Street, Schwenksville, Pennsylvania 19473.			
Texas	Unincorporated areas of Coryell County.	Leon River	Just downstream of State Highway 36	*722
			Just upstream of State Highway 36	*723
			Just downstream of Straw's Mill Road	*727
			Just upstream of Straw's Mill Road	*728
			Just downstream of U.S. Highway 84	*759
			Just upstream of U.S. Highway 84	*760
		Stream CG-1	Just downstream of the County Dirt Road	*744
			Just upstream of the County Dirt Road	*748
			Just downstream of FM 107	*779
			Just upstream of FM 107	*804
		Stream CG-2	At the corproate limits (Fort Gates)	*746
			Downstream of Highway 36	*804
			Upstream of Highway 36	*810
		Stillhouse Branch	At the confluence with the Leon River	*761
			Just downstream of State Highway 36	*766
			Just upstream of State Highway 36	*772
			At the confluence of Stream CG-4	*786
		Stream CG-4	Just downstream of Coryell City Road (FM 929)	*809
			Just upstream of Coryell City Road (FM 929)	*811
		Clear Creek	Just downstream of Echo Springs Road	*953
			Just upstream of Echo Springs Road	*956
			Just downstream of (Brinegar Road) Farm Market 3046	*1,005
			Just upstream of (Brinegar Road) Farm Market 3046	*1,010
		Stream CG-2	Just downstream of the Abandoned Road	*1,007
			Just upstream of the Abandoned Road	*1,008
		House Creek	Just downstream of FM 116	*958
			Just upstream of FM 116	*960
			Just downstream of the Atchison Topeka and Santa Fe Railway	*1,031
			Just upstream of the Atchison Topeka and Santa Fe Railway crossing	*1,042
		Stream CG-1	At a point 1,550 feet above mouth	*986
		Turkey Run	Just downstream of Copperas Cove Road	*972
			Just upstream of Copperas Cove Road	*977
			Just downstream of the Atchison Topeka and Santa Fe Railway	*1,029
			Just upstream of the Atchison Topeka and Santa Fe Railway	*1,049
		Clark Creek	Just downstream of Cache Creek Drive	*967
			Just upstream of Cache Creek Drive	*968
			Just downstream of FM 3046	*978
			Just upstream of FM 3046	*981
	Maps available for inspection at Coryell County Courthouse, Judge's Office, Gatesville, Texas 76528.			
	Send comments to Judge Douglas H. Smith, Coryell County Courthouse, Gatesville, Texas 76528.			
Texas	City of Gatesville, Coryell County	Leon River	Just downstream of Leon Street	*758
			Just upstream of U.S. Highway 36	*760
		Stream CG-2	Just downstream of State Highway 84	*810
		Stillhouse Branch	Just downstream of State Highway 36	*767
			Just upstream of State Highway 36	*772
		Stream CG-4	Just downstream of (FM 926) Coryell City Road	*810
	Maps available for inspection at City Hall, 110 North Eighth Street, Gatesville, Texas 76528			
	Send comments to Mayor Creston Brazzil or Mr. Bob Stevens, City Manager, City Hall, 110 North Eighth Street, Gatesville, Texas 76528			
Texas	City of Rogers, Bell County	South Elm Creek Tributary 1	Just upstream of northern corporate limits	*510
	Maps available for inspection at City Hall, Mesquite and Market Streets, Rogers, Texas 76569.			
	Send comments to Mayor Bill Sherman, or Dr. John Hutka, Mayor Pro-Tem, City Hall, P.O. Drawer 250, Rogers, Texas 76569.			
Vermont	Cavendish, Town, Windsor County.	North Branch Black River	Downstream Corporate Limits	*650
			Approximately 580' upstream of Corporate Limits (downstream boundary).	*660
			Approximately 1,070' upstream of Corporate Limits (downstream boundary).	*670
			Downstream of Private Drive	*679
			Upstream Corporate Limits	*686

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Twentymile Stream	Upstream of confluence with Black River	*760
			Just upstream of State Route 31	*770
			Approximately 625' upstream of State Route 131	*778
			Approximately 1,090' upstream of State Route 131	*790
			Approximately 1,630' upstream of State Route 131	*802
		Black River	Downstream of Howard Hill Road	*720
			Approximately 1,800' upstream of Howard Hill Road	*730
			Approximately 3,400' upstream of Howard Hill Road	*740
			Approximately 2,300' downstream of Twentymile Stream	*750
			Just downstream of Carleton road	*765
			Just upstream of Carleton Road	*773
			Approximately 3,000' upstream of Carleton Road	*777
			Approximately 1,220' downstream of CVPS Power Dam	*790
			Approximately 1,050' downstream of CVPS Power Dam	*800
			Approximately 885' downstream of CVPS Power Dam	*810
			Approximately 730' downstream of CVPS Power Dam	*820
			Approximately 560' downstream of CVPS Power Dam	*830
			Approximately 400' downstream of CVPS Power Dam	*840
			Approximately 230' downstream of CVPS Power Dam	*850
			Just downstream of CVPS Power Dam	*862
			Approximately 680' upstream of Williams Hill Road	*898
			Approximately 3,600' upstream of Williams Hill Road	*910
			Approximately 1,580' downstream of Green Mountain Road (downstream crossing).	*920
			Approximately 250' upstream of State Highway Number 1	*930
			Upstream of Green Mountain Railroad (upstream crossing)	*942
			Upstream Corporate Limits	*954

Maps available for inspection at the Cavendish Town Clerk's Office, Cavendish Town Hall, Cavendish, Vermont.

Send comments to Honorable Gary Lazetera, Chairman of the Cavendish Board of Selectmen, Cavendish Town Hall, Cavendish, Vermont 05124.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Develoment Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

44 CFR Part 67

[Docket No. FEMA-5778]

Revision of Proposed Flood Elevation Determinations for Yellowstone County, Mont.; Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Yellowstone County, Montana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 9039 on February 11, 1980 and in the *Yellowstone County News,* published on or about January 24, 1980, and January 31, 1980, and hence supersedes those previously published rules for the areas cited below.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at Yellowstone County Courthouse, Billings, Montana.

Send comments to: Honorable James A. Straw, Yellowstone County Courthouse, Room 403, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, In Alaska or Hawaii, call Toll Free Line (800–424–9080), Federal Emergency Management Agency, Washington, D.C, 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in Yellowstone County, Montana, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding and location	#Depth in feet above ground, *elevation in feet (NGVD)
Yellowstone River:	
Intersection of Wise Lane and County Rd	*3,187
100 feet upstream from center of Duck Creek Rd	*3,201

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: January 6, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81–2285 Filed 1–23–81; 8:45 am]

BILLING CODE 6718–03–M

Issued: January 8, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2288 Filed 1-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5780]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Virginia; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Salem, Virginia, previously published at 45 FR 55234 on August 19, 1980.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Salem, Virginia, previously published at 45 FR 55234 on August 19, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

The location described as "Confluence with Mason Creek" under the Source of Flooding of Gish Branch, should be corrected to agree with the reciprocal location listed under Mason Creek and the accompanying Flood Insurance Study (profile) and Flood Insurance Rate Map, which are correct. The elevation should read 1,028 feet.

The location described as "State Route 631 (North Mill Road), upstream" also under the Source of Flooding Gish Branch, should have the elevation corrected to read 1,099 feet, in order to agree with the profile and map, which were correct as printed.

The source is listed below with the location and correct elevations:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Virginia	Salem, City	Gish Branch	Confluence with Mason Creek	*1,028
			State Route 631 (North Mill Road) Upstream	*1,099

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: January 8, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-2287 Filed 1-23-81; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATION COMMISSIONS

47 CFR Part 73

[BC Docket No. 80-719; RM-3682; FCC 80-654]

Petition to Reallocate VHF-TV Channel 9 From New York, New York to a City Within the City Grade Contour of Station WOR-TV

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: This action proposes to reassign VHF-TV Channel 9 From New York to a northern New Jersey community within the city-grade contour of Station WOR-TV (Channel 9) in response to a petition from Senators Bradley and Williams of New Jersey. The current licensee, RKO General, Inc., and a competing applicant, Multi-State Communications, have opposed this request. This proposal could provide a first commercial VHF-TV channel assignment to New Jersey.

DATES: Comments must be filed on or before April 6, 1981 and reply comments on or before June 5, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of petition to reallocate VHF-TV Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV. BC Docket No. 80-719, RM-3682, FCC 80-654.

Notice of proposed rulemaking

Adopted: November 6, 1980.

Released: January 13, 1981.

By the Commission: Commissioners Lee and Washburn dissenting and issuing statements; Commissioner Jones concurring and issuing a statement.

1. The Commission has before it the petition of Senators Bill Bradley and Harrison A. Williams of New Jersey ("petitioners") on behalf of the people of the State of New Jersey, requesting the institution of rulemaking looking toward amending the Television Table of Assignments (Section 73.606(b) of the Commission's Rules) to reassign VHF-TV Channel 9 from New York, New York, to a city in New Jersey within the present city-grade contour of the existing facilities of Station WOR-TV

(channel 9).[1] Comments in opposition to the proposal have been received from RKO General, Inc. ("RKO"), Licensee of Station WOR–TV (Channel 9), New York, and Multi-State Communications, Inc. ("Multi-State"), applicant for channel 9 in New York. Reply comments were submitted by petitioners and by Multi-State. A request to receive late-filed comments in support of the petition was submitted by Crossroads Communications ("Crossroads"), an association of citizens living within the Channel 9 service area.[2] We have accepted for consideration the Crossroads pleading since no oppositions were filed, delay has not resulted therefrom and it appears that this party has acted diligently in response to the Commission's action of June 4. This acceptance should not be construed, however, to indicate a decision on Crossroad's petition to intervene. See fn. 2, *supra.*

2. Channel 9 has been selected by petitioners for reallocation because the previous licensee, RKO, has not been granted renewal. See *RKO General, Inc. (WOR–TV),* FCC 80–330, released June 6, 1980. RKO has appealed this decision. *RKO General, Inc.* v. *FCC,* Case No. 80–1696 (D.C. Cir., June 24, 1980). Also, Multi-State has a pending application for Channel 9 in New York which was filed in 1972.

Background

3. The Commission first inquired into proposals to provide better service to New Jersey in Docket No. 20350 in response to a petition from the New Jersey Coalition for Fair Broadcasting ("NJCFB"). In the petition three alternative methods were suggested to provide commercial VHF service: (1) the Commission should investigate new short-spaced VHF–TV channel assignments; (2) the Commission should reallocate an existing assignment from New York to New Jersey; or (3) the Commission should permit a dual city licensing of existing VHF stations. Each of these proposals was addressed in subsequent reports in that proceeding. Briefly, the *First Report and Order* and *Further Notice of Proposed Rulemaking,* 58 F.C.C. 2d 790 (1976), found that the requirements of Section 307(b) of the Communications Act requiring an equitable distribution of frequencies had not been violated by the absence of a commercial VHF channel assignment in New Jersey.[3] The Commission based this conclusion on the then existence of 9 UHF channel assignments in New Jersey[4] and the service provided by some 37 Grade B or better signals from nearby out-of-State stations. While not finding a violation of the equitable distribution provision, it was recognized that New Jersey was in need of additional local television coverage and comments were solicited on the proposal that existing New York and Philadelphia stations actively seek to provide better local service to New Jersey residents by establishing a "physical presence" of their facilities in the State.[5] However, the specific proposals to drop-in a new short-spaced VHF channel in New Jersey or reallocate Channel 7 from New York to central New Jersey were foreclosed from further consideration. The Coalition itself recognized that only a severely short-spaced Channel 8 assignment could be dropped-in. As for the Channel 7 reallocation proposal, the Commission expressed concern with the economic obstacles that relocation would entail and the loss of existing service to residents of Connecticut and Long Island. In seeking additional comments, the Commission did not foreclose a possible reallocation of VHF stations which did not involve moving transmitter sites or a hyphenation of existing New York or Philadelphia stations with a New Jersey community.

4. The *Second Report and Order,* 59 F.C.C. 2d 1386 (1976), reaffirmed the previous finding that there was a need for augmented local television service in New Jersey. In reviewing, on its own motion, the denial of the reallocation proposal, the Commission reasoned that such a relocated New Jersey station would have a primary obligation to its city of license, but only a secondary programing obligation to the remaining portions of its New Jersey service area. Thus, an increase in service to New Jersey would be minimal. Rather, a requirement that all New York and Philadelphia stations adhere to a special New Jersey service obligation plus establishing a physical presence in New Jersey seemed to be a more effective means of providing local service to New Jersey residents. Hyphenation or dual licensing was found to be a technique not designed or suitable for enhancing the service obligations which already exist or could be imposed upon existing stations. Rather, this proposal was viewed as an inflexible service obligation which would also create an undesirable precedent. The Commission's decision imposed upon all stations whose signals reached New Jersey a "special New Jersey service obligation" with specific guidelines set forth. The need for establishing auxiliary studios in New Jersey was left open.

5. The licensees of stations serving New Jersey submitted statements describing their special service commitments to New Jersey. In the *Third Report and Order,* 62 F.C.C. 2d 604 (1976), the Commission discussed the commitments it had received and announced that it would review these statements in connection with future renewal applications. In view of that determination, the Commission held that the construction of separate and permanent studios in New Jersey was unnecessary to achieve desired results.

6. The Coalition sought review before the Court of Appeals, D.C. Circuit, in *New Jersey Coalition for Fair Broadcasting* v. *FCC,* 574 F.2d 1119 (D.C. Cir. 1978). The Court affirmed the Commission, concluding that the "equitable" distribution of channels mandated by Section 307(b) of the Communications Act did not require the allocation of a VHF channel to New Jersey. The Court held that we justifiably considered New Jersey UHF stations and service from out-of-State stations in making our determination, and the Commission's conclusions that more service to New Jersey was needed was not inconsistent with our Section 307(b) determination. In this regard, the

[1] Public Notice of this petition was given on June 20, 1980, Report No. 1236.

[2] Crossroads argues that its late-filed pleading should be accepted because it was not until June 4 that the Commission issued its decision disqualifying RKO as the licensee of Channel 9. The instant pleading was not filed until August 14 concurrent with a petition to intervene in the renewal proceeding between RKO and Multi-State (Docket Nos. 19991 and 19992). The explanation for the delay was the need to discuss and act upon the Commission's decision of June 4, including employing counsel preparing the pleadings.

[3] Channel 13 is a commercial channel assigned to Newark, New Jersey, but it is licensed to a New York City based educational group (Educational Broadcasting Corp.) which operates noncommercial educational Station WNET from facilities in New York.

[4] The following New Jersey channels were then in use: four educational stations—WNJS (Channel *23), Camden; WNJM (Channel *50); Montclair; WNJT (Channel *52); Trenton; and WNJB (Channel *58), New Brunswick; and five commercial stations—WCMC–TV (Channel 40), Wildwood; WXTV (Channel 41), Patterson; WNJU–TV (Channel 47), Linden; WKBS–TV (Channel 48), Burlington; and WWHT (Channel 68), Newark. In addition, Channel *36, Atlantic City, is unoccupied; Channel 53, Atlantic City, has a construction permit pending for a new station; and WRBV, Channel 65, Vineland, New Jersey, has been recently authorized for subscription TV service. Also pending is a proceeding to assign commercial UHF channels to Asbury Park, Atlantic City, Wildwood, Vineland and Newton, and a noncommercial educational channel to West Milford (BC Docket 79–269).

[5] The Commission stated in this regard at 58 F.C.C. 2d 790, 797, ". . . it does appear that the barriers of distance and time, as it relates to New Jersey news coverage likely could be overcome with the employment of, *inter alia,* auxiliary studios and newly developed news gathering devices especially where, as here, the licensees appear to have the economic resources by which to do so."

Court found that the special service obligations imposed on out-of-State stations in Docket No. 20350 was a reasonable exercise of our discretion to fashion a remedy for the problem of additional service to New Jersey.

The Instant Proposal and Comments

7. In support of their proposal to reallocate Channel 9, petitioners state that the Commission's attempts to improve local TV service in New Jersey have failed. In 1978, the NJCFB filed petitions to deny the then pending applications for renewal of the New York City and Philadelphia VHF television stations, alleging that the licensees had failed to adhere to their New Jersey service commitments and that those commitments were insufficient to remedy the New Jersey service problem. Petitioners argue that the Commission determined that the licensees had, in general, adhered to their commitments, but indicated that it was no longer optimistic about the adequacy of that remedy. In this context, petitioners seized upon our recent decision on the WOR–TV renewal application, and propose that the channel be reallocated to any of several communities in New Jersey over which the current operation places a city-grade signal.[6] Because the proposal would not require physical relocation of the transmitter and because it would not require reallocation of a channel on which there was an existing licensee, petitioners argue that their proposal is significantly different than the reallocation proposals which were considered and rejected in the *First and Second Reports and Orders* in Docket 20350, *supra.*

8. Petitioners allege that RKO has lost its renewal expectancy and under the authority of the *Transcontinent*[7] decision, Channel 9 may be deleted from New York regardless of the outcome of RKO's appeal. The holding of *Transcontinent,* we are told by petitioners, affirmed the Commission's authority to remove a channel assignment from a community at the end of the three-year license term without an evidentiary hearing. Petitioners argue in this regard that the right to a hearing under Section 316 of the Communications Act before a modification of license can be effectuated "assumes the continued availability of the channel."

[6] Petitioners list the following cities as possible assignment locations: Bayonne, Bloomfield, Clifton, Elizabeth, Jersey City, Newark, Passaic, Paterson, Union City.

[7] *Transcontinent TV Corp.* v. *FCC,* 307 F.2d 339 (D.C. Cir. 1962).

Transcontinent, 307 F. 2d at 344.[8] As for the rights of Multi-State in view of its pending application for Channel 9 which has been given cut-off protection, petitioners cite the case of *Goodwill Stations, Inc.* v. *FCC,* 325 F.2d 637 (D.C. Cir. 1963), for the proposition that an applicant has no right to expect that a frequency must remain open for the applicant's use. Petitioners further aver that the designation of mutually exclusive applications for hearing still does not confer any rights upon the applicant which could foreclose deletion of the subject channel.[9]

9. Petitioners believe that their proposal is necessary to solve the New Jersey problem in addition to the service obligations imposed upon the New York and Philadelphia stations. Since those stations still have a primary obligation to serve their own licensed communities, even conscientious efforts to provide local coverage of events important to New Jersey residents cannot measure up to the type of service that could be offered by a station serving a seven county area with some 160 cities and towns totalling 4 million people in New Jersey.

10. Crossroads, in support, states that it is in the process of forming a corporation desirous of operating VHF station in northern New Jersey. It notes that its group is composed of leaders and officials with many ties to the interests of New Jersey residents. Crossroads announces that it supports the petitioners' proposal, and would apply for Channel 9 if reallocated, but also offers an alternative which would not involve rule making. Crossroads suggests that the renewal proceeding involving the mutually exclusive applications of RKO and Multi-State be reopened to permit additional applicants, and it has filed a petition to intervene for that purpose.[10] If permitted to intervene and apply for Channel 9 in New York, Crossroads states it or other applicants would propose more service oriented to New Jersey than that offered by the pending applicants.

11. In its opposition, RKO argues that petitioner's reallocation proposal is the same type of request already rejected by the Commission, and that the equities and rights that still attach to Channel 9 do not justify the special treatment requested. RKO alleges that if it were to win its appeal, its status as a licensee would be no different than any other New York or Philadelphia station with respect to the reallocation proposal. The mere fact that charges have been raised and a hearing conducted is said to be an insufficient basis for removing its channel of operation. As for its rights as a licensee, RKO points to Section 307(d) of the Communications Act which provides that the license shall remain in effect pending a hearing, final decision and appeal on the renewal application. Should Channel 9 nevertheless be removed, RKO believes the Commission could, under prior practice,[11] modify RKO's license to specify the new community without opening up the assignment for new applicants. The present situation would thus be distinguished from the case of *Riverside-Santa Ana,* 65 F.C.C. 2d 920 (1977), *recons. den.,* 68 F.C.C. 2d 557 (1978), where modification of the license to specify a new location was refused to the party seeking the change in the community assignment. Here, RKO states that it is not voluntarily seeking a change.

12. Multi-State, the competing applicant for Channel 9 in New York, argues in opposition, that the Commission did not regard reallocation as a viable solution as recently as April 23, 1980, when it sought further commitments from the nearby stations. Further, it argues, that petitioner fails to demonstrate that circumstances have changed since then. Since the petitioners do not propose a change in transmitter site, Multi-State argues that this plan suffers from the same deficiency as earlier reallocation proposals, *i.e.,* that there would be no increase in the New Jersey coverage area. Multi-State foresees that a reallocation could produce many new applicants proposing any of several communities which could require lengthy and costly hearings to resolve. As for its own rights as an applicant for the past 8 years, Multi-State argues that unlike the cited cases of *Transcontinent, supra,* and *Goodwill, supra,* where channels or a band of frequencies were deleted, the proposal here would not constitute the same type of deletion but would retain the same site and the same type of use. For its part, it proposes a solution in which it could continue to receive cut-off protection as an applicant if the channel were reassigned to a New Jersey community. It states that it would provide the type of service to New Jersey envisioned by the petitioners. Multi-State notes that 20% of its voting stock is held by residents and leading

[8] Petitioners also cite, in this regard, *Bendix Aviation Corp.* v. *FCC,* 272 F.2d 533 (D.C. Cir. 1959), *cert den. sub nom.; Aeronautical Radio Inc.* v. *U.S.,* 361 U.S. 965 (1960).

[9] Petitioners cite *Sangamon Valley TV Corp.,* 11 R.R. 783 (1956).

[10] See fn. 2, *supra.*

[11] Citing *Transcontinent TV Corp.* v. *FCC, supra.; Goshen, Ind.,* 51 F.C.C. 2d 711 (1975); and *Lake City, South Carolina,* 47 F.C.C. 2d 1067 (1974).

citizens of New Jersey and that it would utilize a New Jersey studio. Finally, it briefly lists five public interest reasons for its opposition to the VHF reallocation proposal—(1) the entire State would not be served by a VHF station; (2) UHF stations would offer more local news; (3) a lone VHF station would dominate its market; (4) the competing UHF stations would suffer a decline in advertising; and (5) the VHF station would cause financial harm to any minority owned UHF stations nearby.

13. Petitioners replied to the oppositions of RKO and Multi-State by restating that the Commission's authority to delete Channel 9 from New York is supported by the holding of the *Transcontinent* case. They also argue that the "holdover" provision of Section 307(d) of the Communications Act assumes the availability of the channel which can be removed by rule making. Petitioners assert that Multi-State, on its own behalf, has failed to argue that a reassignment would deprive it of any rights by virtue of its application status. Petitioners distinguish the cases cited by RKO (see fn. 11, *supra*) as situations where modifications could take place because only the channel, rather than the city of license, was to be changed.[12] Petitioners believe that the Commission has a sufficient basis for singling out Channel 9 for special treatment regardless of the appeal decision by virtue of its own decision to deny the renewal of RKO's license. Finally, petitioners state they are unimpressed by Multi-State's commitments to serve New Jersey as licensee of Channel 9. In that regard, petitioners note that as a New York station, its primary obligation is still to its city of license, and only a station obligated to serve New Jersey would fulfill the service needs of that coverage area.

14. Multi-State also filed a reply in which it addressed Crossroads' attempt to intervene as a self-serving scheme to apply for Channel 9 eight years too late. Multi-State refers us to its pleadings submitted in response to Crossroads' petition to intervene in Dockets 19991 and 19992 as to why the request should not be granted. Inasmuch as that issue does not directly relate to the proposed reassignment of channel 9 to New Jersey, we have not set forth those arguments as incorporated herein.

[12] Petitioners cite two cases as holding that a change in the community of assignment opens the channel for new applications—*Riverside-Santa Ana, supra;* and *Monahans-Odessa, Tex.*, 42 R.R. 2d 189, 191, n. 7 (1978).

Discussion

15. The Commission has recognized that improvement of VHF service to New Jersey is needed by our past decisions in Docket 20350. There have always been three major impediments to a reallocation of a New York City or Philadelphia VHF channel to New Jersey: (1) the singling out of a particular channel; (2) the loss of existing service by relocation; and (3) the inability of a single VHF station to cover the whole state. Petitioners assert that Channel 9 has been singled out for reallocation by the Commission's decision, in petitioners' words, "[not] to renew the license of RKO General, Inc. for Station WOR–TV, Channel 9, in New York City provid[ing] an opportunity for the Commission to meet the New Jersey problem head on * * *" RKO asserts that if it were to win its appeal then its situation would be no different than any other New York station for purposes of reallocation.

16. The Commission's authority to delete an assigned channel for reassignment elsewhere derives from its public interest obligation under Section 307(b) of the Act. See *Logansport Broadcasting Corp.* v. *U.S.*, 210 F. 2d 24 (D.C. Cir. 1954). The existence of a licensee on a channel which is proposed to be deleted and whose renewal application is subject to judicial determination does not diminish the Commission's authority. *Transcontinent TV Corp.* v. *U.S., supra.* In that case, channel 10 was deleted from Bakersfield, California, and Station KERO–TV was ordered to show cause why it should not switch from Channel 10 to a UHF channel. The VHF licensee demanded a hearing which was denied. On appeal the Court agreed with the Commission that the informal rule making procedure was the proper forum for determining the continuing availability of the channel once the license term had expired. Here, RKO insists that Section 307(d) implies that any Commission action which negates renewing the license constitutes a modification thereof. However, as cited by petitioners in reply comments, the Court held that the processing of a renewal application "assumes the continued availability of the channel. And continued availability, under the scheme of the Act as a whole, is subject to action of the Commission in a rule making proceeding." *Transcontinent, supra,* at 344.[13] Indeed, as was stated in *Goodwill Stations, Inc.* v. *F.C.C., supra,* relying on the *Transcontinent* decision" * * * applications are not licenses and * * * the Commission is [not] disabled by the mere filing of a renewal application from effectuating rule changes * * *." This statement was made in response to an argument that Section 9(b) of the Administrative Procedure Act, the parallel provision to Section 307(d) of the Communications Act (see *Committee for Open Media* v. *F.C.C.*, 543 F. 2d 861, 867 (D.C. Cir. 1976) prohibited Commission actions during a license term which were not to take effect until the expiration of the license period. Similarly, an unlicensed applicant such as Multi-State has no right to expect that the frequency it has applied for must remain available at a specified location.[14] See also *Bendix Aviation Corp.* v. *FCC, supra,* and *Goodwill Stations, Inc.* v. *FCC, supra; Fort Harrison Telecasting Corp.* v. *FCC,* 324 F. 2d 379 (1963) *cert. den.*, 376 U.S. 915 (1964). Therefore, we find that the Commission has authority to take the action requested in this proceeding.

17. Until now we have not had a basis for singling out a particular channel for reallocation to New Jersey. We have acknowledged in previous proceedings the inequity of moving any particular station to New Jersey. However, since we have declined to renew RKO's license for Station WOR–TV, that channel is available for reassignment. Nevertheless, while RKO's license rights are subject to final adjudication in the Courts, we will not take any action in this matter which would prejudice RKO's position. If the licensee should prevail, we would no longer have any basis for singling out Channel 9 for reassignment to New Jersey. If the Commission's decision is ultimately upheld, the first impediment to a New Jersey VHF assignment would have been removed and the channel would be available for reassignment without the need for further proceedings. We have instituted this proceeding now so that we will be in the position to act expeditiously at such time as RKO's status as a licensee becomes final.

18. As to the other obstacles, we would like to call attention to another pending proceeding. In the *Notice of*

[13] In his concurrence to the *First Report and Order* in Docket 20350, Commissioner Robinson stated at 58 F.C.C. 2d 790, 837, fn. 2, "I have no doubt that we can legally reallocate Channel 7 to New Jersey, and could probably do so without any further hearing if we made the transfer effective at the end of the license period. See *Transcontinent TV Corp.* v. *FCC*, 308 F. 2d 339 (D.C. Cir. 1962)."

[14] The Commission has on occasion deleted and applied for FM channel for reassignment elsewhere. See, for example, *Waverly, Tenn.*, 17 F.C.C. 2d 493 (1969; recons. den., 20 F.C.C. 2d 487 (1969); *Burlington and Newport, Vt.* (Docket 78–98), 44 Fed. Reg. 25228, published April 30, 1980, recons. den., 78 F.C.C. 2d 1259, (1980); *Plymouth, N.H., et al.*, Docket 20576, 45 Fed. Reg. 69464, published October 21, 1980.

Proposed Rule Making, In the Table of Television Channel Allotments, BC Docket No. 80–499, 45 Fed. Reg. 72902, published November 3, 1980, the Commission has proposed to permit new short-spaced VHF TV assignments on an equivalent protection basis. These stations called limited facility stations (LFS) could be assigned to meet demand for additional television services utilizing spectrum capacity that would otherwise remain unused. A preliminary study was conducted to determine whether the area currently unserved by Channel 9's Grade B contour could accommodate LFS assignments. The results indicate that 8 such assignments could be made in the southern part of New Jersey as follows:

Channel 9, Bridgeton
Channel 11, Hammonton
Channel 5, Millville
Channel 8, Mt. Holly
Channel 7, Swedesboro
Channel 2, Pleasantville
Channel 4, Vineland
Channel 13, Woodbine

In addition, 4 LFS assignments could be added in the northwestern portion of New Jersey already covered by Station WOR–TV's Grade B contour, as follows:

Channel 3, Sussex
Channel 6, Hainesville
Channel 12, Hamburg
Channel 10, Upper Greenwood Lake

When the above allocations are considered together with the requested reassignment of Channel 9 (with its present transmitter location) commercial VHF TV service could be provided to nearly all of New Jersey. (Camden County and the lower portions of Ocean and Burlington counties may remain unserved depending upon site selection). Attached as Appendix II is a map depicting the interference limited coverage areas of possible LFS assignments along with the current Grade B contour of Channel 9 which is not proposed to be changed.

19. As stated in fn. 6, *supra,* Channel 9 could be reassigned to any of the following northern New Jersey Cities with populations in excess of 50,000 which are located within the current city grade contour of Channel 9:

Newark, 381,930 (1970 Census)
Jersey City, 260,350
Paterson, 144,824
Elizabeth, 112,654
Clifton, 82,437
East Orange, 75,471
Bayonne, 72,743
Irvington, 59,743
Union City, 58,537
Passaic, 55,124
Bloomfield, 52,029

A change in transmitter site would be unnecessary to comply with the requirements of city-grade coverage to any of the above cities. Further, the reallocation of Channel 9 under this proposal would not entail loss of existing service to Long Island or Connecticut.

20. By adopting this proposal we are not abandoning the requirement for the New Jersey and Philadelphia stations to adhere to their recent commitments in response to the Commission's April 23, 1980, letters. Rather, the Commission will scrutinize those commitments as contemplated under previous Commission orders. However, we do seek comments on the impact of this proposal on the need for continuing special service obligations on existing stations. In this regard, institution of LFS service to the various areas of southern New Jersey may take longer to effectuate depending on the demand at each possible location. Under such circumstances it may be necessary to focus on the obligation of Philadelphia stations primarily.

21. RKO has requested that should Channel 9 be reallocated as proposed, its license be modified to specify the new location. RKO attempts to distinguish our holding in *Riverside-Santa Ana, supra,* at para. 11, by the fact that the proponent in that case actually sought a change in the community of assignment for its channel of operation. However, as indicated in paragraph 17, *supra,* we do not intend to reassign Channel 9 to New Jersey unless and until the Commission's decision to deny RKO's renewal application has been finally affirmed. In this context, the licensee's request is moot.

22. We turn now to the status of Multi-State as a long-time competing applicant for Channel 9 in New York. On the one hand our general practice has been to call for new competing applications when channels have been reallocated to new cities.[15] *See, e.g., Tucson, Arizona,* 37 RR 2d 1161, 1165 (1976); *Los Angeles, California,* 31 FCC 2d 666, 668 (1971); *Warner Robbins, Georgia,* 12 FCC 2d 885 (1968); and *Chapman Radio and Television Company,* 1 FCC 2d 1402 (1965). Ordinarily, the assignment of a broadcast channel to a community presents the first and only opportunity, other than filing against a renewal applicant, for parties who are interested in serving that community to apply for the channel. *See, Riverside-Santa Ana, supra,* 65 FCC 2d at 923–24. Indeed, this result may be required under *Fort Harrison Telecasting Corp., supra,* where the court directed the Commission to conduct a new comparative proceeding after the Commission reallocated channels in Terre Haute. The Commission had earlier been directed to conduct a new allocation proceeding due to improprieties in the first proceeding. *Sangamon Valley Television Corp.* v. *U.S.,* 294 F.2d 742 (D.C. Cir. 1961). After the second allocation proceeding had been completed, the Commission was required to hold a new comparative hearing, because the original applications were filed and hearings were held long before the court ordered the new allocation proceeding. On the other hand, the outcome in *Fort Harrison* may have been dictated by the unusual circumstances of that case. Thus, we may have some flexibility in designing a process which would recognize the equities in favor of Multi-State as a cut-off applicant which has expended considerable time and resources in prosecuting its application. We are willing to consider, in the public interest, a deviation from our general policy in light of the circumstances of this case. First, we note that typical allocation proceedings involve moving the channel from one community to another, whereas here we will not necessarily require a change in transmitter location.[16] Second, New Jersey involves an unusual situation, as indicated by the special New Jersey service obligation imposed on New York stations under the *Second Report and Order.* Third, both the RKO license renewal proceeding and the New Jersey VHF service proceeding have been under consideration for a long time, and it may be appropriate to make special efforts to avoid undue delay in selecting a licensee if Channel 9 is eventually reallocated. Thus, we would welcome comments on whether we may or may not allow competing applications, or whether we should follow a different approach which recognizes Multi-State's equities in this matter, if Channel 9 is reassigned.

23. Canadian concurrence in this proposal must be obtained.

24. Accordingly, it is proposed to amend § 73.606(b), the Television Table of Assignments, to delete VHF TV Channel 9 from New York, New York, and reassign Channel 9 to one of the following communities, all in New Jersey:

[15] This approach has also been applied to cases where the community of license does not change but the class of FM channel would. See *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976).

[16] Although petitioners have not requested and we have not specifically proposed, a change in the existing Channel 9 transmitter location, we are willing to consider the possibility and desirability of a New Jersey transmitter location which meets existing spacing requirements should any party wish to propose such a site.

Bayonne
Jersey City
Bloomfield
Newark
Clifton
Passaic
East Orange
Patterson
Elizabeth
Union City
Irvington

25. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

26. Interested parties may file comments on or before April 6, 1981, and reply comments on or before June 5, 1981.

27. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Dissenting Statement of Commission, Robert E. Lee In Re: Petition To Reallocate VHF-TV Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV

The timing of this notice is terrible. This proposal cannot be implemented now because Channel 9 is not available as long as the incumbent licensee has the right to continue operating on the channel. That right will last as long as the appeal in *RKO General, Inc. v. FCC,* Case No. 80-1696 (D.C. Cir., June 24, 1980) is pending, not because the majority gratuitously agrees to postpone decision but because that is the law under the Communications Act and the Administrative Procedure Act. In addition, the majority says that, if the incumbent wins its appeal, this proposal probably cannot be finalized because there would be no reason for singling out Channel 9 from among all New York City channels other than vindictiveness toward the incumbent. In other words the Commission is asking everyone to spend money, resources, and energy on a proposal it cannot now and may not later be able to adopt. The issuance of this notice now does nothing more than add a complication to the appeal in *RKO General, Inc. v. FCC, supra,* by adding the emotional issue to New Jersey service to the legal issues in that case.

I know of no precedent for this action. I dissent.

Dissenting Statement of Commission, Abbott Washburn Re: Petition To Reallocate VHF-TV Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV

Reallocation is not the Solution

For many years, the FCC has been concerned with television service to viewers in the state of New Jersey. Since 1975, we have released three *Report and Orders* which have consistently rejected suggestions for reallocating a New York VHF station to New Jersey. In our *First Report and Order,* 58 FCC 2d 790 (1976), we specifically rejected that suggestion. In our *Second Report and Order,* 59 FCC 2d 1386 (1976), we again rejected the notion of reallocation and reaffirmed the Commission's prior holding that New Jersey can be adequately served through existing allocations. We said,

* * * It is our final determination that adequate service to New Jersey can be obtained through the use of the existing allocations structure. Section 307(b) does not require the reallocation of one or more VHF stations to New Jersey. We believe that our New Jersey service goals will be better achieved through the effective use of all the area stations rather than by concentrating our reliance and our expectations on only a few television outlets. (at 1392)

Our *Third Report and Order,* 62 FCC 2d 604 (1976), reemphasized the Commission's commitment to the responsibilities to New York and Philadelphia stations serving the New Jersey area by outling in detail the requirements which they must meet. This *Order* also terminated the proceedings. It did not, however, end the controversy. Rather, the New Jersey Coalition for Fair Broadcasting appealed the three *Orders* in the U.S. Court of Appeals for the Third Circuit. In 1978, the Court upheld the Commission and supported fully the Commission's actions taken in the past. The Court held: "Thus, we find that the Commission properly found that its allocations are in accord with the Communications Act." *New Jersey Coalition for Fair Broadcasting, Inc.* v. *FCC,* 574 F2d 1119, 1126, (3rd Circuit, 1978).

The petition claims that our previous conclusion concerning reallocation is flawed and incorrect. But their argument obviously flies in the face of the reasoned analysis of the Court which upheld the Commission's action. In addition, *petitioners offer nothing in their pleading which substantiates a different view.* Under Section 1.401(c) of our rules, a petition for rulemaking must set forth sufficient supportive materials to establish that the public interest would be served by the proposal. The petition fails in this respect, and so it should be denied.

As recently as April 23, 1980, the Commission again took the position that providing the substantial New Jersey population with adequate access to or association with a local commercial VHF television broadcast station outlet would not be accomplished by ". . . the reallocation of any VHF station licensed to New York City. . . ." See Letter from the Commission to Mr. Howard Monderer of National Broadcasting Company dated April 23, 1980. There has been no significant change of circumstances since the Commission reached this conclusion last spring. While it is true that the renewal application of RKO for channel 9 has been denied, that action has no effect on the Commission's conclusion that reallocation is not a practical or viable solution. This is not to say that the Commission cannot change its mind. But if it does, its reason must be articulated. That reason is not apparent in the document before us today. Therefore, not only is the petition deficient but the draft NPRM is deficient also. In fact, FCC proposals to add a substantial group of low power V's to New Jersey (12) and six new U's, if adopted, argue forcefully against the need for petitioners' request.

In sum, reallocation would not benefit New Jersey in any significant manner. As we said in our *Second Report and Order:*

A station reallocated to New Jersey would have a primary obligation to its city of license to be sure. However, it would still have only a secondary responsibility to the remaining New Jersey and non-New Jersey portions of its service area. Thus, the expected increase in New Jersey service to be realized by the reallocation of one or a few stations likely would be minimal indeed.

The surviving record, eight volumes and over 3,000 pages, attests to the fact that we reached this conclusion after thorough review of voluminous comments and replies. I see nothing proffered in the petition to challenge it.

Today's draft document at page 3, paragraph 3, states with reference to the Commission's 1976 *First Report and Order:* "In seeking additional comments, the Commission announced that it would further explore a possible reallocation of VHF stations which did not involve moving transmitter sites or hyphenation of existing New York or Philadelphia stations with a New Jersey community.

In fact, what the Commission said in its *First Report and Order,* 58 FCC 2d 790 at page 801, paragraph 19: While leaving the docket open to seek further comment, the Commission stated: ". . . we are prepared at this juncture to announce our rejection of certain proposals proffered by the Coalition and its supporters as possible courses for Commission action . . . the Commission has found that adoption of proposals to reallocate channel 7 to central New Jersey [is] not warranted and will not be pursued further in this proceeding. We also believe that other reallocation proposals which would not involve the movement of transmitter sites, as set forth by the Coalition and others, are infeasible. However, we do not foreclose the submission of further comment concerning this form of reallocation."

The wording in today's draft item suggests that the Commission affirmatively expressed an interest in exploring reallocation as a possible solution. In fact, the language of the *Order* reveals that the Commission specifically rejected reallocation as a solution.

Distinguishing Transcontinent

The majority cites *Transcontinent TV Corp.* v. *U.S.,* 308 F.2d 33d (D.C. Cir. 1962) as authority supporting its decision today but in fact that case is distinguishable. First, *Transcontinent* involved the *deletion* of a VHF channel. This item does not involve deletion. On the contrary, the station will be operated from the same transmitter site as before. Secondly, in *Transcontinent,* the party authorized to use the frequency to be deleted was allowed to operate on a new frequency which was substituted for the old one; there is no proposal here to substitute a new channel for channel 9. Finally, there was not the slightest suggestion in *Transcontinent* that he new frequency would be opened up for new applicants after substitution.

Channel 9 May Not Fairly Be Chosen for Reallocation

Even assuming, and I do not, that reallocation is the solution, selection of channel 9 at this time is premature and prejudices the rights and equities of both RKO and Multi-State Communications, Inc. Should the Court reverse the Commission's findings on RKO's qualifications, WOR–TV will then be in no different position than any other New York City licensee, except that it will be in a comparative hearing with Multi-State. In 1972, Multi-State filed a competing application for channel 9.

The draft NPRM prejudges the case now pending in the D.C. Circuit, which includes an appeal by RKO of the Commission's decision denying renewal of station WOR–TV. *RKO General, Inc.* v. *FCC,* Case Number 80–1696 (D.C. Cir., June 24, 1980). As the Commission's own *Order* makes clear, until judicial review is completed, RKO shall continue as the licensee of channel 9. Therefore, it cannot be found that RKO's present position is distinguishable, for purposes of channel reallocation, from that of any of the other New York City stations.

I dissent. This proposal would not serve the public interest, nor would it serve the interests of the citizens of New Jersey.

Concurring Statement of Commissioner Anne P. Jones In Re: Petition To Reallocate VHF–TV Channel 9 From New York, New York, to a City Within the City Grade Contour of Station WOR–TV

I could not have voted in favor of this item as originally presented, because the change proposed was too limited—a paper change of license assignment with little practical value in increasing New Jersey-oriented service. As rewritten, however, the Notice now goes more to the crux of the issue. I am thus concurring in issuance of this Notice as I am persuaded that the process of comment and discussion can and should go forward. But I wish to make clear my reservations about the proposal, which are several:

(1) I want to underline the contingent character of this Notice. The Commission will take no final action on relocating the main studio facilities, and thus the license, of Channel 9 until the appeals process on our WOR–TV decision has run its course. Only if our nonrenewable of WOR–TV's license is upheld can we clearly say we have reason to select this particulr channel for reassignment. The contingent character of the rulemaking also should preclude any inference that this action amounts to an additional penalty in the RKO renewal proceeding.

(2) While RKO's appeal is pending it seems to me that any proposal to reassign Channel 9 may be perceived as speculative, with consequent degradation of the rulemaking. That is, some persons who would comment on the proposal may not do so at all, and others may not comment as fully as they otherwise would. Although I am troubled by this possible flaw in the rulemaking, I am willing to assume with the majority that the rulemaking may nonetheless be useful.

(3) Commenters should note as well that this proposal asks for a fairly wide range of discussion—including possible relocation of the station's transmitter/antenna from the World Trade Center to some location within the state better able to serve New Jersey viewers. This could also be accomplished to a degree by directionalizing of the existing facilities. But comment to this point is especially important if the proposed reassignment of Channel 9 is to be seen as more than a mere bandaid approach. For clearly, if the antenna remains as it presently is, the move of the license to a New Jersey location is no better than a paper change. Economic reality will continue to encourage the licensee of Channel 9 to focus programming more on New York than New Jersey.

(4) The change in "bricks and mortar" location of a station makes little sense unless there is a substantive change in programming for the people of New Jersey. While I am skeptical of the degree of increased local programming, given the economic "pull" of the New York magnet, I will be interested in comments discussing the inter-relation of changes in the transmitter location and/or direction with changes in program offerings.

(5) Commenters should bear in mind that the possible addition of Limited Facility Stations on the VHF band in New Jersey is only tangential to the present proposal. The LFS proposal is just that and may or may not be utilimately approved. The question of relocating Channel 9 should, I feel, thus be analyzed in isolation from the LFS potential.

Clearly the frustration to New Jersey officials and viewers on this issue is continuing and high. We have dealt with this matter for years, usually being brought up short by the threshold question of *which* New York (or Philadelphia) VHF facility to move if it was accepted that such a move should be made at all. If nothing else, this Notice allows us to examine the more substantial question of increased service and diversity to New Jersey viewers.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 42

Contractor Acquisition of Automatic Data Processing Equipment

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of Availability and request for comment on draft Federal Acquisition Regulation.

SUMMARY: The Office of Federal Procurement Policy is making available for public and Government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR) regarding contractor acquisition of automatic data processing equipment. Availability of additional segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before March 20, 1981.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503. Federal agency requests must be directed to the FAR Agency Contact Point (see Federal Register, Vol. 45, No. 125, June 26, 1980, p. 43236 for list).

FOR FURTHER INFORMATION CONTACT: William Maraist (202) 395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purposes of the FAR are to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following part of the draft Federal Acquisition Regulation is available upon request for public and Government agency review and comment.

PART 42—CONTRACT ADMINISTRATION

Subpart 42.13 Contractor Acquisition of Automatic Data Processing Equipment

FAR 31.205-2 denies reimbursement for leased ADPE in excess of the cost of ownership unless the contractor has advance Government approval to lease. This subpart 42.13 provides procedures for contractor preparation and submission of requests for advance approval of ADPE leases, as well as guidance to contracting officers. The coverage will serve as a Government-wide procedure covering documentation under an application of FAR 31.205-2. It is intended to promote uniform and prompt indirect cost settlement and uniformity in contract administration.

This subpart is based primarily on Defense Acquistion Regulation (DAR) 3-1100 and on the limited related coverage in Federal Procurment Regulation (FPR) 1-4.1107-18. The FAR has adopted the comprehensive approach of the DAR, simplified the coverage by reorganization, and used the FPR approach for obtaining purchase options and credits resulting from contractor lease of ADPE.

There are no proposed policy changes in the FAR coverage.

Dated: January 16, 1981.

William Maraist,

Acting Assistant Administrator for Regulations.

[FR. Doc. 81-2952 Filed 1-23-81; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 100 through 199

[Docket HM-177]

Public Hearing and Request for Comment on Trailer-on-Flatcar Transportation of Hazardous Materials

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of public hearing and request for comment.

SUMMARY: A public hearing will be held to solicit comments, data, and test results on Trailer-on-Flatcar (TOFC) securement and the effect of a high center of gravity on the safe transportation of hazardous materials in TOFC service.

DATES: The hearing will be held on February 25, 1981, at 9:00 a.m. Written comments should be received no later than April 2, 1981.

ADDRESSES: The meeting will be held at the Holiday Inn, O'Hare/Kennedy, 5440 North River Road, Rosemont, Illinois 60018. Written comments should be submitted to the Dockets Branch, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, (202)755-4906.

SUPPLEMENTARY INFORMATION: On December 11, 1978, an NPRM was published in the Federal Register (43 FR 58050) under Docket HM-167. Comments were received from the Association of American Railroads (AAR) concerning TOFC service for the transportation of hazardous materials in intermodal tanks. The AAR believes that there is an increased risk associated with TOFC securement, i.e., the securement of the portable tank to the motor vehicle chassis and the securement of the motor vehicle chassis to the flatcar. Additionally, the AAR believes that "* * * the combined center of gravity for the flatcar, chassis and container is approximately 139" and this grossly exceeds the 98" maximum center of gravity for freight cars allowed by paragraph 2.1.3, AAR Specification M-1002."

Even though the AAR did not submit any data, calculations, or test results to support it position, the MTB believes the AAR's views should be given further consideration before it makes a final decision concerning the transportation of tank containers in TOFC service. Also, the MTB recognizes that, in view of the AAR's references to a 98" maximum center of gravity, the entire matter of transportation of hazardous materials in TOFC service should be examined to determine if a rulemaking proposal should be initiated under this Docket. This examination should include semitrailers (vans) and freight containers mounted on chassis as well as tank containers.

MTB is particularly interested in obtaining comments and information concerning the following factors that should be addressed in relation to TOFC operations.

(1) The current manner in which TOFC rail cars and other car types having center of gravities (when loaded) in excess of 98" are handled to ensure adequate safety. What special

requirements and/or procedures are imposed?

(2) The extent which supplemental snubbing and/or hydraulic stabilizers can improve the dynamic performance (car roll angle, side bearing loading, spring motion, vertical loading fluctuation) of high center of gravity cars. If such control devices are effective, can the center of gravity limitation be raised and still have the same level of safety performance?

(3) The contribution of track cross level variations and/or distance between rail joints in causing or exaggerating rock and roll in high center of gravity cars, and in TOFC loads in particular.

(4) Evaluations as to the effectiveness of operational changes (i.e., speed restrictions, humping limitations, route selection, etc.) in countering the adverse effects of high center of gravity loaded cars. Is there a set of operating conditions wherein high center of gravity loads, including intermodal tanks can be safely moved in TOFC service? At what additional cost?

(5) The trade offs and options which are important factors in determining and setting center of gravity restrictions and/or limits. To what degree is the hazard of the cargo a controlling consideration?

(6) Beyond center of gravity influences, the other factors which must be taken into account when assessing the safety of movement by TOFC. What components of operation are unique to TOFC service?

(7) The extent to which improvement in securement, end of car cushioning, better loading/unloading methods, etc., can reduce concern for the safety of hazardous materials in TOFC service. Can the securement of the portable tank to the chassis and the chassis to the flatcar be made adequate for a realistic railroad environment? What combination of improvements can make such TOFC service safe?

(8) An enumeration of special requirements which are recommended for transport of hazardous materials in TOFC service but which are not applicable for general TOFC movements. What additional requirements can be justified for the transport of hazardous materials? For example, should stacking of certain packagings (e.g. double decking of drums) be prohibited?

(9) The past shipping experience with hazardous material movement in TOFC service. Aside from incidents (involving unintentional releases) reported to MTB, what has been the accident history vs. the total number of shipments made? Do some railroads tend to have more problems related to such movements than others?

(10) Testing which has been performed, or could be performed to measure the current safety level of hazardous materials in TOFC service, and which could be used to evaluate countermeasure improvements. What are the results of past testing? What are the recommendations for additional testing to prove or disprove various contentions? How should such testing be performed and who should do the testing?

Interested persons are invited to participate in the hearing. Persons intending to present oral statements for the record should advise the information contact mentioned earlier in this Notice.

While unsupported views and opinions will be accepted, information as requested above in the form of data, calculations or concerning accident experience and test results would be most useful. In particular, the MTB invites the AAR to provide data and calculations supportive of its 98" maximum center of gravity limitation.

(49 U.S.C. 1803, 1804, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to part 106)

Issued in Washington, D.C. on January 19, 1981.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-2745 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Parts 531 and 533

[Docket No. FE 80-01; Notice 1]

Passenger Automobile and Light Truck Average Fuel Economy Standards; Model Year 1985 and Beyond

AGENCY: National Highway Traffic Safety Administration DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Motor Vehicle Information and Cost Savings Act specifies a standard of 27.5 mpg for passenger automobiles for 1985 and each model year thereafter, but allows amending that standard and establishing a higher one if the maximum feasible average level of fuel economy is higher than 27.5 mpg. The Act also requires that maximum feasible average fuel economy standards be established for light trucks for each model year. In view of these statutory provisions and the projected petroleum shortages of this country, this notice and a related report are being issued to invite public comment on the improvements that can be made in passenger automobile and light truck fuel economy in the 1985–1995 period. The agency is interested in securing information regarding the impacts the conversion of automotive plants will have on employment and geographic distribution, and on the capital requirements of the automobile industry. Additional information is requested concerning the benefits to the Nation of reducing fuel consumption, the benefits and costs to the consumer of improved fuel economy and additional actions such as subsidies and incentives which the Federal government can adopt legislatively to facilitate higher levels of improvements. Improvements in average fuel economy could save billions of barrels of gasoline over the life of the 1985–1995 passenger automobiles and light trucks.

DATES: Comments on this notice must be received on or before April 27, 1981.

ADDRESSES: Comments must be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. Submissions containing information for which confidential treatment is requested should be submitted to: Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, S.W., Washington, D.C. 20590. Additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section. The Docket Section is open to the public from Monday to Friday between 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Scheiner, Office of Automotive Fuel Economy Standards, NRM-22, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-472-5906).

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration is issuing this notice to aid its analysis of the potential for improvement in passenger automobile and light truck fuel economy in the 1985–1995 period and of the regulatory and nonregulatory methods that can be used to facilitate the making of those improvements, while ensuring the economic health and viability of the domestic automobile industry. The issuance of this notice does not necessarily indicate that standards will be established, but rather is intended as an information gathering process to determine whether standards should be

set and, if so, at what level and with what supplemental government programs.

With respect to the potential for fuel economy improvement, the agency views the most important variables as being the future availability and price of petroleum and the availability of capital needed to make the post-1985 improvements. A third, but less critical variable, is the availability of technology. The technology necessary to make significant post-1985 improvements is either already available or can be made available by the late 1980's. The issue raised by this notice concerning the actions to be taken by the Federal government is whether the government should simply continue to issue fuel economy standards or whether a range of nonregulatory actions should be relied upon. Among the possible nonregulatory actions for which legislation could be sought are subsidies and tax incentives and disincentives.

The Department is sensitive to the fact that the automobile industry is "mature" (i.e., oriented more toward production process improvements than toward product innovation) and capital-intensive, and is faced with a number of aging, less efficient plants. The demand for fuel efficiency has thrown the industry into a transition state requiring design and technological innovations which force the renovation or replacement of older facilities. For example, General Motors is closing two of its oldest assemply plants in Pontiac, Michigan and in St. Louis, Missouri and has selected nearby sites for new construction pending government approval. It should be recognized that the industry is faced with a tremendous task in a short period of time as compared to its historical "evolutionary" progress of incremental change. The need for new products, new components and new plants can be expected to have varying effects on the financial viability of the manufacturers, the suppliers to the industry, and employment (including shifts in demand for skilled labor and geographical location). It is necessary to fully appreciate the economic and production challenges which are now facing the auto industry in order to assess the magnitude of potential future achievements in fuel economy.

The Federal program to improve the fuel economy of passenger automobiles and light trucks was initiated by Congress in late 1975 with the passage of the Energy Policy and Conservation Act amending the Motor Vehicle Information and Cost Savings Act. Enactment of the legislation followed the 1973 oil embargo, sharp rises in the price of foreign petroleum, nationwide gasoline lines, and one of the longest and deepest recessions since the 1930's. There were drastic declines in the sale of new domestic passenger automobiles, substantial unemployment inside and outside the automobile industry and a jump in the rate of inflation.

Congress mandated an ambitious program for improving fuel economy through the implementation of mandatory standards by the Department of Transportation. This action was taken in recognition of the consumption by passenger automobiles and light trucks of a large proportion of all petroleum consumed annually in this country and of the substantial potential for improving automotive fuel economy through application of technology and through shifts in vehicle sales toward the smaller size classes. Authority to implement the program has been delegated to the National Highway Traffic Safety Administration. To ensure that all reasonable means are used for improving fuel economy, Congress specified that the standards be set at the maximum feasible level. Since the automobile industry's ability to make and finance fuel economy improvements is not unlimited, Congress provided that the Department's determinations of maximum feasible improvements be made after considering technological feasibility, economic practicability, fuel economy effects of other types of Federal automotive standards, and the national need to conserve energy.

To provide industry with added flexibility in deciding how to comply with the standards and to preserve a reasonable range of consumer choice among new passenager automobiles and light trucks, Congress departed from its usual practice of providing for standards that require each vehicle to meet the same minimum level of performance. Instead, Congress provided for standards that regulate the average fuel economy of each manufacturer's separate fleets of passenger automobiles and light trucks ("corporate average fuel economy" or "CAFE"). Thus, a manufacturer could continue to produce vehicles with relatively low fuel economy if they were offset by the production of vehicles with relatively high fuel economy. Congress provided additional flexibility by permitting short run deviations from the schedule of standards. If a manufacturer's CAFE exceeds the fuel economy standard for a given class of vehicles in a particular year, it earns a credit that may be applied against any civil penalties incurred for violating the standard for the same automobile class in the immediately proceding or following three model years.

Congress mandated that the 1974 level of passenger automobile average fuel economy be approximately doubled (to 27.5 mpg) by 1985. To ensure achievement of that target, Congress provided for fuel economy standards for each of the intervening years. Standards of 18, 19 and 20 mpg were specified in the law for model years 1978, 1979 and 1980, respectively. Congress left the level of the 1981–84 standards to the Secretary of Transportation to establish administratively, but required that they be set at the maximum feasible level and that they ensure steady progress toward the 1985 target. Subsequently, standards of 22, 24, 26, and 27 mpg were established by the Secretary of Transportation for that 4 year period (42 FR 33534; June 30, 1977).

For the post-1985 period, Congress provided for the continued application of the 27.5 mpg standard for passenger automobiles, but gave the Department authority to set higher standards at the maximum feasible level of average fuel economy. If the NHTSA issues a rule that amends the 27.5 mpg standard for 1985 or for a subsequent model year by establishing a higher standard, the rule must be submitted to Congress for its consideration. If neither house of Congress disapproves the rule during the first 60 days of continuous session after its submission, the rule requiring higher levels of fuel economy would go into effect.

Congress did not specify a target for the improvement of light truck fuel economy. Instead, it provided for the establishment of maximum feasible standards for model year 1979 and each model year thereafter. On March 14, 1977, standards for light trucks manufactured in model year 1979 were established (42 FR 13807). Standards for the 1980 and 1981 model years were established on March 23, 1978 (43 FR 11995). In response to a petition from Chrysler Corporation, the 1981 standard for two-wheel drive light trucks was reduced from 18.0 mpg to 17.2 mpg on June 25, 1979 (44 FR 36975). A further reduction of that standard by 0.5 mpg and a similar reduction in the 1981 standard for four-wheel drive light trucks resulted from the provisions of the March 23, 1978 rule relating to lubricants. That rule provided that the 1981 standards would be 0.5 mpg lower if the use of special, low friction lubricants in fule economy testing were not approved by the Environmental

Protection Agency (EPA) by January 1, 1980. Such approval was not given.

Recently, the NHTSA took steps to provide the same long term planning guidance for light truck fuel economy improvement as exists for passenger automobiles by establishing light trucks standards for model years 1982 (45 FR 20871, March 31, 1980) and 1983–85 (45 FR 81593, December 11, 1980). The 1982 rule set standards of 18 mpg for two-wheel drive vehicles and 16 mpg for four-wheel drive vehicles. Standards of 19, 20, and 21 mpg were set for model years 1983–85, respectively. Those standards are applicable to the combined light truck fleets of manufacturers. Optional separate standards were also established to provide the manufacturers additional compliance flexibility. The separate standards are 19.5, 20.3 and 21.6 for two-wheel drive light trucks and 17.5, 18.5, and 19.0 mpg for four-wheel drive light trucks, in model years 1983–85, respectively.

In looking at the post 1985 period, the NHTSA is examining the benefit, costs, and marketability of further fuel economy improvements, the financial and technical ability of the industry to make those improvements, and the appropriate role of the Federal government is securing those improvements. In view of the pivotal position of the automobile industry in this nation's economy, the NHTSA believes that improving fuel economy should be pursued in a manner consistent with the preservation of a strong domestic automotive industry. A healthy automotive industry is important to the health of the national economy and to the well-being of the many persons working directly or indirectly in that industry and of the communities in which those persons work. Further, certain levels of sales are necessary for vehicle manufacturers to be able to generate capital for renewing plant and equipment and for making further improvements in vehicle quality and fuel efficiency. The Department believes that achieving higher levels of fuel economy will promote the health of the domestic industry, by meeting both consumer demand and the competitive challenge of the importers.

The continued presence of the same critical factors that led to establishing the Federal fuel economy program underlines the importance of making further improvements in fuel economy. The percent of the nation's petroleum supply that comes from foreign sources has increased substantially since 1975, although the amount has been fairly stable in the past year. Also, the price of foreign oil has continued to rise dramatically. Currently, the refiner acquisition cost of imported oil averages about $35 per barrel. That cost is 140 percent higher than the $14.50 level just two years ago.

As a result of the increased importation of foreign oil and especially of the higher oil prices, the total U.S. expenditures for foreign oil have increased dramatically. In 1972, this country spent less than $5 billion for foreign oil. The 1980 bill was approximately $82 billion, while the 1981 cost is expected to exceed $100 billion. The resulting adverse impact on the balance of trade and rate of inflation will be even greater than the impact of past outlays.

Further, the availability of an adequate supply of petroleum is not any more certain today than it was in the period immediately following the 1973 oil embargo. The revolution in Iran and the Iran-Iraq War have resulted in worldwide supply disruption. Supply disruptions due to political events will probably continue to occur. The availability of an adequate supply of oil may even be less certain now than in 1975 due to the political uncertainties in the Middle East and the emergence of a new philosophy of oil producing countries on their rate of production. A significant number of these countries are now consciously holding down their level of production. The reasons for this new policy are several fold. First, holding oil in the ground is perceived as more beneficial to these countries in the long run than producing and selling it now. Second, restricting the petroleum supply aids the producing countries in boosting the price of petroleum. Third, a country's restriction of its petroleum production provides assurance to that country of a longer term source of income. Finally, some oil producing nations perceive that too rapid a pace of national development and modernization can be socially and politically destabilizing and thus find less need for revenue to finance those activities.

Although much of the technology that was available in 1975 for improving fuel economy has been or will be applied by 1985, there is still much that can be done to improve fuel economy. The analysis undertaken by the NHTSA to establish the 1981–84 fuel economy standards for passenger automobiles indicated that the domestic automobile manufacturers could achieve levels of average fuel economy for 1985 and thereafter exceeding the 27.5 mpg level set in the Cost Savings Act. (See "Rulemaking Support Paper Concerning the 1981–84 Passenger Auto Average Fuel Economy Standards," July 1977, copies of which are located in the Docket Section.) The same conclusion was reached as part of the NHTSA's evaluation of the fuel economy program conducted for the 1979 Report to Congress (44 FR 5742; January 29, 1979). Further, in July 1980, the domestic manufacturers announced that they would attain average fuel economy levels in excess of 30 mpg by 1985. Representatives of the industry, in a February 1979 DOT-sponsored conference on fuel economy, also projected significantly higher fuel economy levels for the post-1985 period.

From a strictly technical standpoint, there is no doubt that average fuel economy levels for passenger automobiles well above 27.5 mpg can be achieved in the post-1985 period. The potential of current technology is illustrated by the achievements of a Volkswagen Rabbit with a turbocharged diesel engine. When this 4-seat, 2,000 pound car was tested under a Department of Transportation contract, it obtained about 60 mpg on the combined EPA test cycle. Research vehicles designed to comply with high levels of crash survivability have met similarly high fuel economy levels. Even this level of fuel economy does not represent the full potential of current technology since additional technology and techniques, such as substitution of lightweight materials, could be applied to such vehicles. Substantial improvements could also be made in the fuel economy of 5 and 6 seat cars. Further, there are also fuel economy improvements to be gained through shifts in the proportion of vehicles in the various size classes toward the more fuel efficient classes.

A major issue is the capability of the domestic manufacturers to finance investments for fuel economy improvements after 1985 when they have strained that capability to make the investments needed to meet the fuel economy standards through model year 1985. It is expected that the combined losses of the domestic manufacturers for 1980 will exceed $4.5 billion. The domestic automobile industry's traditionally more profitable mid and large size passenger automobiles are once again selling poorly, while smaller passenger automobiles are selling at very high volumes. Indefinite layoffs of automobile workers now exceed 175,000, and significant operational cash shortfalls are being projected for the domestic manufacturers in the early 1980's. This will involve substantial borrowing by the domestic manufacturers, whereas they have

traditionally used internal sources of funds for capital expenditures. Thus, the pace at which the domestic manufacturers can improve their fuel economy must be closely examined. Other considerations in analyzing the possibilities for future fuel economy improvements include the potential health effects of diesel emissions, consumer acceptance of more fuel efficient vehicles with substantially different attributes or higher prices than those vehicles previously offered, and the possibility of further substantial shifts of production into the more fuel efficient classes.

NHTSA is developing an analysis which, when completed, will fairly represent the goals achievable with a financially healthy domestic industry. This scenario assumes that domestic manufacturers will achieve their announced average fuel economy goals for 1985 (over 30 mpg) and will continue to upgrade the fuel economy of their new passenger car and light truck designs after 1985 at a moderate but steady rate, consistent with maintaining profitablilty and improving their debt/equity ratios over 1985 levels. A comprehensive, desegregated analysis has been performed for the General Motors (GM), Ford, and Chrysler fleets from 1985 to 1995. Product plans have been developed based upon the 1985 fleet and a new model introduction rate believed to be consistent with the previously mentioned financial restraints. Based on these product plans fuel economies and fleet fuel consumptions were calculated. The results show that average fuel economy values for GM, Ford, and Chrysler over 40 mpg would be achieved in 1990 and over 46 mph in 1995. With these fuel economies, the total passenger automobile fleet fuel consumption would be one million barrels per day less than its 1980 value by 1985, almost two million barrels per day less by 1990, and 2.7 million barrels less by 2000. The agency has not yet confirmed the auto industry's capability to generate the funds required for capital investment to meet these levels.

The current difficulties of the domestic automobile industry have a variety of sources. One is the growing share of the domestic new passenger automobile market held by foreign automobile manufacturers in the expanding small passenger automobiles segment of that market. Imported automobiles account for about 26.5 percent of the entire domestic automobile market in 1980, the highest level ever. The ease with which these inroads have been made resulted both from corporate strategies and from external events. Foreign manufacturers have concentrated almost exclusively in the smaller size classes primarily because of the traditionally high gasoline prices in most of the national markets in which they compete. Conversely, the domestic manufacturers, operating in an environment of cheap energy, concentrated in the larger size classes. As a result, the foreign entries in the smaller size classes have a much greater variety of types, styles and levels of luxury than do the domestic entries. As consumers in this country have become more energy conscious, it has been natural that the foreign manufacturers have enjoyed a substantial competitive advantage in satisfying consumer demand for attractive, fuel efficient vehicles.

The net effect of the domestic manufacturers' not having the flexibility to adjust rapidly the production capacity between the small and large size classes of passenger automobiles is a decline in the revenue that might otherwise have been earned. In addition, the market for light trucks, which had been booming through early 1979, has experienced a significant decline with a substantial drop in the sales of the larger trucks and an increase in the sales of compact trucks. This trend in likely to continue as the demand for vehicles continues to shift toward smaller, more fuel efficient classes of passenger automobiles and light trucks in response to continuing rises in gasoline prices, periodic gasoline shortages, inflation and other factors. This loss of revenue comes at a time when the domestic manufacturers are making major capital investments to respond to consumer demand and the fuel economy standards (as well as other Federal vehicle standards). Inflation too is adding to the manufacturers' needs for capital. Inflation's effect on the cost of replacing plant and equipment has eroded the current depreciation allowance provided under the tax laws. As a result of the manufacturers' investment needs, they have had to raise capital externally.

The need to make further improvements in fuel economy after 1985 and the significant costs involved in making those improvements pose the fundamental question of whether legislation should be sought to create subsidies, incentives or other similar devices for reducing the cost of those improvements or for accelerating the market demand for more fuel efficient vehicles. Regardless of whether higher standards are set for the post-1985 period, the domestic manufacturers will have to make substantial expenditures to improve their fuel economy to meet consumer demand for more fuel efficient vehicles, respond to competition from the foreign manufacturers and to put themselves in a better position to weather downturns in sales such as occurred in 1974–75 and 1979–80.

The NHTSA has several alternatives with respect to setting of standards for the post-1985 period. It could continue its current practice of setting standards that increase in stringency each year. This alternative would ensure that steady progress is made in improving fuel economy. By making adequate allowance for the problems of the manufacturers in setting the standards, the agency could substantially preserve the manufacturers' flexibility under this alternative. Enactment of the Department's proposal for extending the period for carrying back and forward credits for exceeding the standards to three years has provided a significant amount of additional flexibility. A second alternative would be to set standards whose stringency increases only in multi-year intervals. This would give the manufacturers even more discretion in determining the timing of achieving the post-1985 standards. It would also facilitate the earning of credits. For example, if the manufacturers exceeded 27.5 mpg in the model years immediately following 1985, and if the 1985 standard did not increase in stringency until 1990, substantial credits would accumulate for application in 1990, reducing the required fuel economy improvements for that year.

As an alternative or adjunct to regulatory approaches, the Federal government could encourage the purchase of more fuel efficient vehicles. For example, a sizable tax could be placed on the sale of gasoline. This approach would have the benefit of affecting the entire automobile fleet immediately, instead of the approximately 10 percent of the fleet that is replaced annually. To minimize the adverse impact on the economy, the tax could be phased-in over a several year period. Congress has previously considered such a tax and rejected even a one-time tax increase of 3 cents which would be rebated through other means. Among Congress' concerns were the effect of the tax on persons having to drive long distances and on persons with low incomes. An alternative to a gasoline sales tax would be a tariff placed on imported petroleum.

To discourage the purchase of fuel inefficient vehicles directly, a substantial "gas guzzler" tax could be applied to such purchases. Congress

considered this alternative in 1975 and rejected it in favor of standards. Three years later, however, Congress adopted a gas guzzler tax, at least in principle, for passenger automobiles. Actual implementation of such a tax was, in effect, deferred through the adoption of a tax schedule that would affect only a very small fraction of the annual production of passenger automobiles. A major factor in this action was Congress' concern over the effect that a tax with broader application would have on large families and on the domestic manufacturers. In both 1975 and again in 1978, Congress considered authorizing rebates to be paid to purchasers of relatively fuel efficient vehicles. On both occasions, the idea was dropped since applying the rebate to foreign as well as domestic vehicles was perceived as disproportionately aiding the foreign manufacturers and applying it to domestic vehicles alone posed possible problems under the General Agreement on Trade and Tariffs. The basis for the former objection may be substantially diminished by the late 1980's when the domestic vehicle manufacturers should achieve corporate average fuel economy levels substantially closer to those achieved by the foreign manufacturers.

To reduce the cost of making fuel economy improvements, subsidies or tax credits could be authorized by Congress for making investments related to improving fuel economy. The tax credits could serve essentially the same function as subsidies if the manufacturers could take the credits in advance of making investments. If subsidies or a tax credit were to be targeted to fuel economy related investments, the problem of defining eligible investments would have to be addressed. A related step would be for Congress to increase the depreciation allowances. Such a step would assist the manufacturers in covering the costs of replacing plant and equipment. Another step that would aid most capital intensive industries like the automobile industry would be to attempt to slow the rate of inflation. This problem has proven an extremely difficult one and will continue to confront the President and Congress.

Since the regulatory approach and stimulation of the market demand for fuel economy are not mutually exclusive, a combination of the two approaches could be fashioned that would ensure steady progress in the improvement of fuel economy while aiding the manufacturers to meet the cost of complying with the standards, the demand for more efficient vehicles and the challenge of the foreign manufacturers.

To aid the public in formulating and structuring their comments on the policies to be adopted by the NHTSA in promoting improved fuel economy, the agency has prepared a report on post-1985 fuel economy, copies of which are available from the NHTSA's Office of Plans and Programs. In addition, the agency invites comment on the following questions. Due to the complexity of these questions, a 90-day comment period has been provided for the preparation of answers.

I. Technology

A. Mix of vehicle sizes. The average automobile produced in this country has been much larger, heavier and therefore, less fuel efficient than automobiles produced and used in the rest of the advanced industrialized world. To what extent can the mix of passenger automobiles and light trucks be shifted from the current mix to achieve higher fleet fuel economy by 1990? By 1995? What would the fuel economy benefits of such shifts be?

In European countries with a standard of living that equals or exceeds that in this country, a passenger automobile of the dimensions of the General Motors X-body car or the Chrysler K-Car would be considered a large passenger automobile, while in this country it is classified as a compact passenger automobile. The standard size domestic automobiles of the mid-1950's were about the dimensions of today's compacts. Could a passenger automobile (offered in sedan, hatchback and station wagon versions) with approximately the same dimensions as the General Motors X-body or Chrysler K-car meet American motorists needs in 1990 for a large size passenger automobile? (NHTSA's safety regulations would not preclude this.) Since there are now 6-seat passenger automobiles with the same interior space as the X-body and K-cars, passenger automobiles similar to the X-body and K-car could be designed to accommodate six passengers.

B. Automotive body construction. Redesigning all passenger automobiles to incorporate front wheel drive would permit significant weight reduction, and therfore, improved fuel economy. Are there any technological reasons why the domestic manufacturers cannot convert essentially all of their passenger automobiles to front wheel drive by the mid or late 1980's? What new weight saving design or construction techniques will be feasible for mass production purposes by 1990? By 1995? One possible technique is monocoque body construction in which the body or skin of a structure such as an automobile, airplane or subway car is designed to absorb much of the stress placed on the structure. To what extent can additional lightweight materials be substituted for current materials by 1990? By 1995?

C. Engine improvements. The turbocharged indirect injection diesel engine may represent the current state-of-the-art in engines designed to achieve maximum automotive fuel efficiency. Even higher efficiency may be achievable with future engines such as the direct injection diesel engine. If health effect problems do not prevent widespread use of diesels, what fuel economy benefits can be obtained with these engines by 1990? By 1995? What other types of engines can provide similar fuel economy benefits in that time period? What are the technological, industrial or financial impediments to the transition from the current spark ignition engine to a more fuel efficient engine type?

D. Transmission improvements. What improvements can be made to current automotive transmissions by 1990? By 1995? Can continuously variable transmissions, or transmissions with electronic control of shift patterns be developed and used by 1990? By 1995? What fuel economy benefits would result from the use of such transmissions?

E. Other fuel economy improvement techniques. What other fuel economy improvement techniques are there that could be used in the 1985–1995 period?

II. Economics

A. What variable, capital and other fixed costs would be associated with each of the technological changes discussed in I?

B. What will be the automotive industry's capability to finance the capital investments necessary to make these technological changes in the 1985–95 period?

C. what will be the impact on consumers of these changes in vehicle prices and attributes?

D. If aluminum, plastics and other materials replace a large amount of the steel in today's vehicles, what will be the impact on total employment and regional employment in these supplier industries? What other industries will be affected by technological change in the automobile industry?

E. How will the phasing out of old plants, buildings of new plants, and renovation of middle-aged plants and the inherent productivity improvements made possible during rebuilding cycles affect the long range profitability and

competitiveness of the domestic auto companies?

F. What impacts on individual job skills can be expected as a result of industry revitalization? What will the effect of revitalization be on total plant employment? How might employment distribution patterns change (e.g., from older central cities to outlying areas)?

III. Emission and Safety Requirements

A. To what degree and by what means can particilates and other emissions from diesel engines by controlled and at what cost (including effect on level of fuel economy)? What degree of control will be needed to protect the public health?

B. What would the necessary weight impact be of implementing the tentative plans in the NHTSA's Five Year Rulemaking Plan for new safety standards and requirements applicable to passenger automobiles and light trucks?

C. What will be the safety effects of new lighter materials and smaller vehicles? What compensating steps should be taken to protect occupants of smaller vehicles in crashes?

IV. Energy Considerations

A. What future gasoline price increases are currently anticipated? How will such increases affect consumer demand for fuel efficient automibles?

B. Is there a point at which alternative methods of alleviating the county's energy problems, such as other forms of conservation and increased domestic production of energy, should be pursued to the exclusion of any further automotive fuel economy improvements? What are the costs and availability of these other forms of conservation and menas of increased energy production compared to fuel economy improvement?

C. How do the type and magnitude of the potential environmental risks associated with diesel engines and other means of improving fuel economy compare to the type and magnitude of the environmental risks associated with other means of energy conservation? With the methods available for increasing the domestic production of energy? a prime example of such methods is the production of synthetic fuels. General Motors has suggested that fuel economy be improved to the point at which the cost of saving additional gasoline equals the cost of producing and transporting to market synthetic fuels. To what extent and by what means can the environmental risks associated with such other means of conservation and with such methods for increasing energy production be controlled and at what costs? How can these environmental costs be quantified and assigned a dollar value?

D. What levels of passenger automobile and light truck average fuel economy could be achieved by the various domestic automobile manufacturers in 1990 and in 1995? What fuel savings can result?

V. Policy Choices.

A. If standards are issued for the post 1985 period, should they require annual increases in average fuel economy as a way of ensuring steady progress or should they require increases only at multi-year intervals as a way of providing the manufacturers with still further flexibility and creating the possibility of reducing compliance costs?

B. Should standards for the post 1985 period be supplemented or replaced by the legislative creation of market-like mechanisms to accelerate the steadily growing demand for more fuel efficient automobiles and to reduce the impact of the capital investments necessary to improve fuel economy? What market-like mechanisms would be effective?

C. Should standards for post-1985 passenger automobiles and light trucks be proposed simultaneously? In what way and to what extent would that approach promote coordinated analysis of the proposals and implementation of the standards?

D. How should the problem of the least capable manufacturer be handled under existing law? Substantial fuel economy benefits be foregone if standards are keyed more to the manufacturers with lower fuel economy potential. Should the law be amended to provide new ways of accommodating the less capable manufacturers?

VI. Legislative Initiatives

A. What sort of Federal financial assistance (e.g., investment tax credit, accelerated depreciation) would most effectively aid the automobile industry in making these investments? What level of assistance would be necessary to contribute significantly to the industry's ability to make these investments? What would be the impact on the Treasury of this assistance?

B. At today's price of gasoline, what level of tax on gasoline and diesel fuel would be necessary to significantly reduce the use of cars already on the road today and to accelerate significantly the growing demand for more fuel efficient new cars? What adjustment would have to be made to the application of the current schedule of gas guzzler taxes so that the tax effectively discouraged the purchase of a substantial portion of the more fuel inefficient new cars being sold? Should such a revised gas guzzler tax be applied to light trucks? What level of tax credits would be necessary to induce a significant increase in the purchase of high fuel efficiency vehicles?

The NHTSA has considered the impacts of this action in accordance with Executive Order 12221 and the Department's implementing regulations (44 FR 11034) and concluded that the action is significant within the meaning of that order. The agency has further determined that, if a proposal is ultimately issued, a regulatory analysis would be required based on the potential costs and on the public interest in the issues raised in this notice. However, the agency has been unable to prepare an analysis due to the substantial uncertainty about the level of standards, if any, to be established. The responses to this advance notice will provide the necessary data.

Submission of Public Comments

Interested persons are invited to submit written comments on all aspects of this proceeding, especially the technical and economic policy issues discussed above. Comments should refer to Docket Number FE–80–01 and be submitted to the Docket Section at the address provided at the beginning of this notice. If a commenter wishes to submit information under a claim of confidentiality, five copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and ten copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. 552(b)(4), and that disclosure of the information would result in a significant competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage.

In addition, the commenter, or in the case of a corporation a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to th public.

All comments received before the close of business on the comment closing date indicated above will be considered by the agency and will be available for examination in the docket at the above address after the date of their receipt. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Interested persons should also review material in the FE–76–01 docket for the 1981–84 passenger automobile fuel economy standards rulemaking proceeding and in the fuel economy general reference docket, since much of that information will be relied upon this proceeding.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901, (15 U.S.C. 2002); delegation of authority at 49 CFR 1.50)

Issued on January 19, 1981.

Joan Claybrook,

Administrator.

[FR Doc. 81–2634 Filed 1–21–81; 3:45 pm]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 81–05; Notice 1]

Federal Motor Vehicle Safety Standards; Low Tire Pressure Warning Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits comments to aid the National Highway Traffic Safety Administration (NHTSA) in determining whether to propose a new Federal motor vehicle safety standard on low tire pressure warning devices. This new standard would require that each new motor vehicle be equipped with a device which would warn the driver when the tire pressure in any of the vehicle's tires was significantly below the recommended operating levels. The agency solicits views, comments, and information from interested persons regarding the contemplated proposal.

DATE: All comments on this notice must be received on or before March 27, 1981.

ADDRESS: All comments on this notice should refer to Docket No. 81–05, and be submitted to Docket Section, Room 5108, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arthur Neill, Jr., Office of Vehicle Safety Standards, NHTSA 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2800).

SUPPLEMENTARY INFORMATION: Proper tire inflation is important for motor vehicle safety. An underinflated motor vehicle tire develops extremely high temperatures (240° to 265° Fahrenheit at highway speeds) inside the tire. These high temperatures, in turn, reduce the tire's life expectancy and increase the probability of tread and casing separations and fabric fatigue on the tire. Surveys conducted by NHTSA have shown that roughly 50 percent of passenger car tires and 13 percent of truck tires are operated at pressures under the vehicle manufacturers' recommended inflation levels. Further, a study by Indiana University stated that underinflated tires were a probable cause of 1.4 percent of studied vehicle accidents. Since there are approximately 18.3 million accidents annually in the United States, this suggests that underinflated tires are probably responsible for about 260,000 accidents each year.

Additionally, underinflated tires increase the rolling resistance of passenger cars and decrease their fuel economy. Research data has shown that tires underflated by 10 psi will reduce the fuel economy of the vehicle on which they are mounted by 8 percent if it is a bias ply tire, 7 percent if a bias belted tire, and 3 percent if a radial tire.

There are two types of devices which can show the driver of a vehicle when his tires are underinflated. One is an on-tire warning device and the other, an in-vehicle warning device.

The on-tire device generally attaches to the value stem of the tire and displays a long red warning protrusion when the "trigger level" is reached. The trigger level is the amount of underinflation at which the red warning protrusion is set to operate. For instance, if a tire's recommended inflation pressure is 32 psi, a trigger level of 29 psi might be set on a low tire pressure warning device. Temperature variability and the inherent inaccuracy in low tire pressure warning devices require the trigger level to be set far enough below the recommended inflation level so that the device will not constantly be triggered, but not so far below that level that the tire will run seriously underinflated for any length of time.

In-vehicle low tire pressure warning devices have a monitor in each tire which relays inflation information to a warning mechanism inside the interior of the vehicle, mounted on or under the dashboard. When the triggering level is reached, the monitor registers underinflation. The warning device inside the vehicle then lights up to indicate that a tire is underinflated and shows which tire is the problem.

NHTSA considered requiring low tire pressure warning devices in 1970, but determined that the cost of in-vehicle indicators, the only type of low tire pressure warning devices then available, were too high at that time. During the 1970's, several manufacturers developed inexpensive on-tire warning devices, and the price of in-vehicle devices has fallen significantly. Accordingly, NHTSA intends to re-examie this area to determine if it should now propose requiring these devices on new motor vehicles.

To aid the agency in considering this contemplated rulemaking, the agency is seeking answers from the interested public to the following questions:

(1) a. What factors and information should be considered by the agency in determining the appropriate "triggering levels" of low tire pressure warning devices?

b. What level should be proposed as the triggering level, considering temperature variability and warning device accuracy?

(2).If NHTSA were to require low tire pressure warning devices on motor vehicles, should the type of device be specified and, if so, what type (i.e. on-tire, in-vehicle, or option of using either one).

3. What percentage of effectiveness, in terms of drivers inflating their tire up to the recommended pressure after the warning device has been triggered, can be expected from on-tire systems? From in-vehicle systems? If it is believed there will be a difference in terms of driver response to the different types of warning systems, explain why.

4. To what extent are concerns about product liability a factor influencing the market or installation of low tire pressure warning indicators, either on-tire or in-vehicle?

5. How are on-tire and in-vehicle low tire pressure warning devices affected by ice, mud, dust and other environmental factors?

6. If NHTSA were to require low tire pressure warning devices what should be the minimum requirements for ensuring the visibility of an activated warning device (e.g., size, color)? NHTSA is particularly interested in comments on this point for on-tire low tire pressure warning devices.

7. a. What would be the cost (in 1980 dollars) to produce and install an in-vehicle low tire pressure warning device on a new passenger car? A new truck?

b. What would be the cost (in 1980 dollars) to produce and install on-tire low tire pressure warning devices on all four tires of a new passenger car? A new truck?

c. What is the cost (in 1980 dollars) of tire valves and stem extensions mounted on new tires?

8. What is the fuel saving potential of low tire pressure warning devices due to improved treadwear and reduced rolling resistance at the triggering level recommended in response to question 1 above?

9. Are there any low tire pressure warning devices which replace the entire valve and core assembly on a tire? If so, please provide the agency with any test results and your opinions on the system, along with the reasons for that option.

10. What effect does the installation of on-tire or in-vehicle low tire pressure warning devices have on tire balance? If either of these devices is thought to cause an imbalance, state the reasons for that opinion and whether the imbalance would be static or dynamic.

11. Is there a better location other than the valve stem in which an on-tire low tire pressure warning device could be mounted? If so, explain why that location would be feasible and the advantages of mounting the device in this alternate location.

12. What is the effect of tire inflation pressure on fuel economy and treadwear with different types of tires (bias, bias-belted, and radials) mounted and different classes of vehicles (passenger cars, light trucks, and heavy trucks)?

13. How much leadtime should the agency allow for a requirement that all new motor vehicles be equipped with on-tire low tire pressure warning devices? With in-vehicle devices?

14. What are the minimal operational, performance, and cost requirements a low tire pressure warning device (either on-tire or in-vehicle) must satisfy to be acceptable for mass production?

15. For purposes of testing low tire pressure warning devices for compliance with a new standard, would the point at which the tire pressure is monitored affect the accuracy of the measurement of the tire pressure?

16. What studies have been performed which would show cause and effect relationships between low tire pressure and auto accidents? Truck accidents?

17. Could modification of tire or valve design be made that would eliminate the problems associated with low tire pressure? What would be the cost?

18. What would be the cost of a public education program geared to informing drivers of the benefits of maintaining appropriate tire pressure? (Say, on the scale of the 55 m.p.h. program)

Interested persons are invited to submit information, views, and arguments on the specific areas outlined in the above questions and on the general subject of low tire pressure. Commenters are requested to identify their responses to the above questions by using the numbers of those questions.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion. Those commenters desiring to be notified of the receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. When the comments are received, the docket supervisor will return the postcard by mail. Late comments will be considered to the extent practicable prior to the agency decision whether or not to issue a proposal.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential information, should be submitted to Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the address for comments given above. Any claim of confidentiality must be supported by a statement that the information falls within 5 U.S.C. 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of 5 U.S.C. 552(b)(4) and that diligent search has been conducted by the commenter or its employees to ensure that none of the specified items has previously been released to the public.

NHTSA has tentatively determined that this is a significant rulemaking action within the meaning of Executive Order 12044. Accordingly, the agency has prepared a regulatory analysis for this contemplated rulemaking action. Copies of this regulatory analysis have been placed in Docket 80– , and may be inspected and obtained by interested persons at any time during normal business hours for the docket section.

The program official and attorney principally responsible for the development of this notice are Arthur Neill and Stephen Kratzke, respectively.

(Secs. 103 and 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 19, 1981.

Carl Nash,

Acting Associate Administrator for Rulemaking

[FR Doc. 81–2543 Filed 1–21–81; 3:06 pm]

BILLING CODE 4910–59

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49 CFR Part 575

[Docket No. 25; Notice 44]

Consumer Information Regulations; Uniform Tire Quality Grading

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendment of the Uniform Tire Quality Grading Standards to permit deferral for up to four months of the sidewall molding requirements of the regulation as they apply to new tire lines. The notice also proposes extending the deadline for conversion to a new tread label format. These modifications are proposed in response to petitions from Atlas Supply Company and Armstrong Rubber Company and are intended to avoid unnecessary burdens on industry, while assuring that consumers are provided with accurate grading information.

DATES: Comments must be received on or before February 25, 1981.

Proposed effective date for amendments to 49 CFR 575.104(d)(1)(i)(A) and (B): April 1, 1981.

Proposed effective date for amendment to 49 CFR 575.104(d)(1)(ii): October 1, 1981.

ADDRESSES: Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. 202-426-1740.

SUPPLEMENTARY INFORMATION: The Uniform Tire Quality Grading (UTQG) Standards (49 CFR 575.104) provide information to consumers on the performance of passenger car tires in the areas of treadwear, traction, and temperature resistance. Tire grades in these three categories are supplied to consumers by manufacturers and brand name owners by means of words, letters, and figures molded on the tire sidewall (49 CFR 575.104(d)(1)(i)(A)), printed labels attached to the tire tread surface (49 CFR 575.104(d)(1)(i)(B)), and point of sale literature available at tire dealerships (49 CFR 575.104(d)(1)(ii)). In addition, explanatory information on the UTQG system is available to prospective vehicle purchasers at automobile dealerships (49 CFR 575.104(d)(1)(ii)), and to vehicle first purchasers in materials accompanying the vehicle (49 CFR 575.104(d)(1)(iii). The explanatory material accompanying the new vehicle must contain a statement referring the reader to the tire sidewall for applicable UTQG grades.

The Atlas Petition

On August 14, 1980, the Atlas Supply Company submitted a petition for rulemaking to the National Highway Traffic Safety Administration (NHTSA) requesting that the agency commence a rulemaking proceeding to amend the sidewall molding requirement of the UTQG regulation. Atlas suggests that sidewall molding not be required for a new tire line until 6 months from the date grades for the tire are submitted to the NHTSA Administrator pursuant to 49 CFR 575.6(d). That provision, together with 49 CFR 575.6(c), requires that tire grades be furnished to the Administrator at least 30 days before the day on which the tire manufacturer or brand name owner first authorizes a newly introduced tire to be put on general public display and sold to consumers.

In support of its petition, Atlas contends that UTQG grades cannot be accurately determined until testing is conducted with production tires. Atlas argues that its investment in tire molds for a new line of tires typically exceeds one million dollars, and that if the molds must stand idle while tires are being tested, Atlas' return on its capital investment will be nil for at minimum four or five months. Atlas further contends that such delays would have a substantial adverse impact on the marketing plans and promotional efforts of its licensees.

If Atlas' suggestion is adopted, manufacturers would be able to build up tire inventory while UTQG testing was underway. Paper labels bearing UTQG grades would be added to the tires before shipment for distribution and molds would be changed on a running basis. This procedure, Atlas contends, would allow it to fully and immediately utilize its capital investment, while consumers would be provided with UTQG information by means of tread labels and point of sale information.

The Goodyear Tire & Rubber Company, the General Tire & Rubber Company, and the Rubber Manufacturers Association have submitted statements in support of the Atlas petition. Goodyear supports Atlas' contention that UTQG grades can be accurately determined only by testing production tires, and expresses concern that, if Atlas' suggestion is not adopted, undergrading is likely to result. Goodyear also contends that a 6-month phase-in for UTQG molding of new tire lines would be consistent with the policy behind the initial staggered implementation schedule for UTQG, and would avoid serious production delays and costly loss of productivity.

NHTSA's Proposal for Sidewell Molding

In the interest of avoiding any necessary burdens on the tire industry and of assuring accurate tire grading, NHTSA grants Atlas' petition to conduct a rulemaking proceeding and proposes to amend the sidewall molding and automobile first purchaser requirements of the UTQG regulation. NHTSA proposes that paragraph (d)(1)(i)(A) of section 575.104 be amended to require sidewall molding on new tire lines no later than four months after production of the tire line is first commenced. A new tire line would be defined as a group of tires differing substantially in construction, materials, or design from tires previously sold by the manufacturer or brand name owner. Manufacturers and brand name owners would still be required to attach tread labels with applicable UTQG grades prior to offering tires for sale to consumers.

NHTSA's proposal differs from the amendment suggested by Atlas in that the grace period for conversion of tire molds begins on the date tires are first produced, rather than the date on which NHTSA is notified of the grades assigned. Under the Atlas timetable, a manufacturer could produce tires without UTQG grades on the sidewalls for several months while testing was being conducted. Then the manufacturer would have another period of several months before sidewall molding would be required. Delays in testing, grade assignment, or notification to the agency could lead to the production of large quantities of tires without sidewall grades.

NHTSA believes that such extensive pre-molding production can be avoided while still fulfilling the objective of the Atlas petition. The original 6-month phase-in period for implementation of the UTQG molding requirement was intended to avoid production shutdowns while tire molds were substantially revised to incorporate UTQG grades. In the case of new tire lines, however, the tires will be designed with space for UTQG grades. Goodyear has informed NHTSA that in this situation grades can be added to the molds by a simple and quick stamping operation, without the need for shutting down production lines. Thus, the agency believes that UTQG testing and mold conversion can be accomplished within a matter of months following the beginning of production of a new line of tires.

While Atlas and Goodyear recommend that a six-month phase-in period would be appropriate, Atlas suggests in its petition that the six-month period represents the maximum amount of time which might be necessary to conduct testing, assign grades, and convert molds. Atlas, which purchases tires from several different manufacturers, concedes a four or five-month delay would generally be involved. The agency believes that tire manufacturers which produce all their own tires would be faced with fewer logistical problems than Atlas and could complete their grading and conversion process at least as rapidly as Atlas.

In view of these considerations, NHTSA believes that a four-month grace period more accurately represents the time needed for mold conversion and proposes such a period. The agency desires comment on whether a four-month phase-in period is adequate or whether some other period is necessary. Comments on this issue should detail the time needed to complete the various steps in the grade assignment and mold conversion process.

If the proposed sidewall molding phase-in for new tire lines is adopted, consumers may encounter difficulty in ascertaining the UTQG grades of some tires used as original equipment on new

motor vehicles. UTQG tread labels are not required for tires used as original equipment, since new vehicles are generally driven before sale and the labels would be obliterated. Automobile manufacturers have not been required to include tire specific information in point of sale literature, due to the difficulty in determining in advance the line of tires which will be used on a particular vehicle. Since sidewall molding is the only source of tire specific information for automobile first purchasers, under the Atlas plan consumers would be without information on UTQG performance of new tire lines used as original equipment for several months after introduction of the new line. Goodyear estimates that roughly five percent of original equipment tires would be sold without grades on the sidewall.

NHTSA believes that while automobile manufacturers may have difficult determining in advance which line of tires will be used on a particular vehicle, they should know which tire lines may be used on various models. Therefore, in order to assure a source of UTQG information to vehicle first purchasers, NHTSA proposes to amend 49 CFR 575.104(d)(1(ii) to require automobile manufacturers to affix a window sticker bearing UTQG grades to each vehicle equipped with tires exempted from the sidewall molding requirement as being tires of a new tire line. NHTSA believes that these stickers can be affixed at the stage of the assembly process where vehicles are equipped with tires, and that any resulting burdens on the manufacturing process will be minimal. In conjunction with this proposal, NHTSA is also considering an amendment to exempt vehicle manufacturers from having to submit the sticker information to the agency in advance of placing the stickers on new vehicles.

While NHTSA recognizes the apparent need of tire manufacturers and brand name owners for immediate relief from the UTQG sidewall molding requirements as they apply to new tire lines, NHTSA believes that evaluation of the impact of the proposed change is difficult in the absence of actual experience with the new requirement. The agency is particularly concerned with the possible effect of the modification on original equipment sales and with potential difficulties in defining what constitutes a new tire line. For this reason, NHTSA proposes that the sidewall molding and point of sale information amendments be in force only until April 1, 1984. At that time, the agency will reexamine the issue and take whatever action may be justified with regard to continuation of the amendment.

The Armstrong Petition

In response to a petition for rulemaking from the Armstrong Rubber Company, NHTSA proposed (44 FR 1814; January 8, 1979) and subsequently adopted (44 FR 68475; November 29, 1979) and modification to the tread label requirements of the UTQG regulation (49 CFR 575.104(d)(1)(i)(B) and Figure 2) to permit the use of two separate labels to convey UTQG information. To facilitate the use of separate labels, and to improve label clarity, NHTSA made minor modifications in the label format specified in Figure 2 of the regulation. Use of the new label format is required for tires manufactured on or after October 1,1980.

Armstrong submitted a petition for rulemaking on October 12, 1980, asking that the October 1, 1980, deadline for conversion to the new label format be extended at least nine months to permit Armstrong to use up its existing supply of old-format labels. Armstrong contends that, while the original October 1, 1980, conversion date appeared reasonable at the time it was adopted, subsequent economic conditions, including the decline in sales of bias and bias-belted tires, left Armstrong with considerable stocks of old format labels which could not be used before the specified conversion date. Armstrong estimates that approximately 10,000 rolls of labels worth $100,000 will have to be scrapped if the deadline is not extended.

In view of the limited differences between the new and old label formats, the unforeseen events giving rise to the surplus of old-format labels, and the scope of the economic loss which would result if the unused labels had to be scrapped, the agency tentatively agrees that an extension of the deadline for conversion to the new format is justified. Thus, NHTSA grants Armstrong's petition for rulemaking and proposes that the deadline for conversion to the new UTQG tread label format be extended to April 1, 1982, for bias, bias-belted, and radial tires, with conversion optional at any time prior to that date.

To the extent that the Atlas and Armstrong petitions are not granted by this notice, the petitions are denied. Due to the economic disruptions which could result from delay in dealing with these requests for rulemaking, the comment period for this notice is limited to 30 days. Since the modifications to the sidewall molding and tread labeling requirements relieve restrictions, an effective date of April 1, 1981, is proposed for these Amendments. A later effective date of October 1, 1981 is proposed for the automobile manufacturers to assemble, print, and distribute the required information.

NHTSA has evaluated this proposal and has determined that the proposed changes are not significant within the meaning of Executive Order 12221 and the Department of Transportation policies and procedures for internal review of proposals. The agency has further determined that cost savings from the proposed easing of requirements are not large enough to warrant preparation of a regulatory evaluation. The agency has also concluded that the environmental consequences of the proposed changes will be minimal. Since this notice proposes releaving a restriction, the agency has determined that the proposal will not significantly affect small businesses.

§ 575.104 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 575.104, Uniform Tire Quality Granding be amended as follows:

1. Section 575.104(d)(1)(i)(A) would be amended by substitution of the words "Except for a tire of a new tire line, manufactured within the first four months of production of the tire line and before April 1, 1984," in place of the words "Except for a bias-ply tire manufactured prior to October 1, 1979, a bias-belted tire manufactured prior to April 1, 1980, and a radial-ply tire manufactured prior to October 1, 1980," and by addition of the sentences "For purposes of this paragraph, new tire line shall mean a group of tires differing substantially in construction, materials, or design from tires previously sold by the manufacturer or brand name owner of the tires. As used in this paragraph, the term "construction" refers to the internal structure of the tire (e.g., cord angles, number and placement of breakers), "materials" refers to the substances used in manufacture of the tire (e.g., belt fiber, rubber compound), and "design" refers to properties or conditions imposed by the tire mold (e.g., aspect ratio, tread pattern)." at the end thereof.

2. Section 575.104(d)(1)(i)(B)(1) would be amended by substitution of the words "April 1, 1932", in place of the words "October 1, 1980".

3. Section 575.104(d)(1)(i)(B)(2) would be amended by substitution of the words "April 1, 1932", in place of the words "October 1, 1980".

4. Section 575.104(d)(1)(ii) would be amended by addition of the sentences

"Where a vehicle is equipped with tires exempted from the sidewall molding requirements of paragraph (d)(1)(i)(A) as tires of a new tire line, the vehicle manufacturer shall affix to a window of the vehicle a label containing the grades for the tires with which the vehicle is equipped and the explanations for each performance area specified in Figure 2. The information need not be in the same format as in Figure 2." at the end thereof.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 19, 1981.

Carl Nash,

Acting Associate Administrator for Rulemaking.

[FR Doc. 81-2670 Filed 1-21-81; 3:30 pm]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 81-03; Notice 1]

Evaluation Report on Federal Motor Vehicle Safety; Standard No. 203, Impact Protection for the Driver From the Steering Control System and Standard No. 204, Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Request for Comments on Evaluation Report.

SUMMARY: This notice announces the publication by the NHTSA of an Evaluation Report concerning Safety Standard No. 203, *Impact Protection for the Driver from the Steering Control System* and Standard No. 204, *Steering Control Rearward Displacement.* This staff report evaluates the effectiveness and costs of the Federal standards that limit the impact force and rearward displacement of the steering control assemblies of passenger cars. The report was developed in response to Executive Order 12044, "Improving Government Regulations," which provides for government-wide review of existing, major Federal regulations. The NHTSA welcomes public review and comment on this evaluation.

DATE: Deadline for submission of comments is April 27, 1981.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by contacting: Ms. Eleanor Kitts, Office of Management Services, National Highway Traffic Safety Administration, Room 4423, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0874). All comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours, 8:00 a.m.-4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Program Evaluation, Plans and Programs, National Highway Traffic Safety Administration, Room 5212, 400 Seventh Street, SW., Washington, D.C. 20590 (202-4267-1574).

SUPPLEMENTARY INFORMATION: Safety Standard No. 203 (49 CFR 571.203) sets requirements for absorbing the impact forces that occur when the driver strikes the steering column in a frontal crash. Safety Standard No. 204 (49 CFR 571.204) too, is directed at frontal crashes. It limits the rearward displacement of the steering column into the passenger compartment to reduce the likelihood of chest, neck or head injuries. Both standards became effective for passenger cars in January 1968.

Pursuant to Executive Order 12044, "Improving Government Regulations," the NHTSA recently conducted an evaluation of Standards 203 and 204 to determine the effectiveness of the technology selected by the manufacturers in terms of saving lives and preventing injuries and to determine the costs of that technology to consumers. Under the executive order, agencies are to review existing regulations to determine whether the regulations are achieving the order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected.

The 203/204 Evaluation Report is the second of a series of NHTSA studies reviewing existing Federal motor vehicle safety standards. The first report was an evaluation of Standard No. 214, *Side Door Strength* (49 FR 50878 August 30, 1979). The studies analyze the real-life accident experience of vehicles complying with the standards and the costs associated with the standards. The agency published a listing of the other current and planned evaluation projects on July 10, 1980. (45 FR 46459).

Since Standards 203 and 204 were promulgated simultaneously and, to a large extent, require the same hardware modification to obtain compliance, they are treated in the evaluation as if they were a single safety standard. The principal findings of the 203/204 Evaluation Report are as follows:

• Standards 203 and 204 have significantly reduced driver fatalities and injuries in frontal crashes. They will annually prevent 1,300 fatalities and 23,000 nonfatal injuries requiring hospitalization when all cars comply.

• Although steering assemblies complying with Standard 203 have reduced deaths and injuries in frontal crashes, their performance is degraded in oblique frontal impacts.

• Standard 204 has substantially reduced rearward displacement of the steering column in crashes.

• Standards 203 and 204 add $10 to the cost of purchasing and operating an automobile over its lifetime.

The report was developed from statistical analyses of the agency's Fatal Accident Reporting System and National Crash Severity Study data, cost analyses of actual steering assemblies, and a review of laboratory and crash tests and multidisciplinary accident investigations.

The Evaluation Report also concludes that a substantial number of driver fatalities and injuries are still resulting from contact with the steering assembly, in spite of the benefits of Standards 203 and 204. Standard 203 steering assemblies tend to bind rather than absorb impact forces when they are subject to oblique impacts. Standard 204 has not eliminated vertical displacements of the steering column in crashes. In addition, improvements to the steering wheels, such as using energy-absorbing padding on the wheel, have not been uniformly implemented in the vehicle fleet. The Evaluation Report provides a statistical basis for possible research on further improvements to steering assemblies.

The NHTSA welcomes public review of the Standard 203/204 Evaluation report and invities the public to submit comments. It is requested but not required that 10 copies be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 112, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50 and 501.8).

Issued on January 16, 1981.

Barry Felrice,

Associate Administrator for Plans and Programs.

[FR Doc. 81–2158 Filed 1–23–81; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 571

[Docket No. 81–04; Notice 01]

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The purpose of this notice is to announce that NHTSA is considering the issuance of a proposal to amend Safety Standard No. 205, *Glazing Materials,* to adopt less stringent requirements for glass-plastic glazing, i.e., glazing consisting of laminated glass with a sheet of plastic bonded to the interior side. This notice is being issued in response to a petition for rulemaking submitted by Saint-Gobain Vitrage. The agency believes that the inboard layer of plastic on certain types of glass-plastic glazing may reduce the risk of lacerations to a vehicle occupant who strikes the windshield in a collision. However, some of these materials do not meet all the requirements specified in Standard No. 205 for windshield glazing. Also, certain types of glass-plastic glazing may create offsetting safety hazards to vehicle occupants. For example, if the plastic side has too low a resistance to abrasion, it could be easily scratched and thus impair the driver's view of the road ahead.

DATES: Comments must be received on or before March 27, 1981.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket room hours: 8:00 a.m.—4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Edward Jettner, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone: 202–426–2264).

SUPPLEMENTARY INFORMATION: Safety Standard No. 205 (49 CFR 571.205) specifies performance requirements for the types of glazing materials that may be used in motor vehicles and motor vehicle equipment, and also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates by reference the American National Standard "Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," Z26.1–1966 (ANS Z26). The requirements of Standard No. 205 are set forth in ANS Z26 in terms of performance tests that the various types or "Items" of glazing must pass. There are 13 "Items" of glazing for which requirements are specified in the standard. The only items of glazing that can be used in the windshield of a motor vehicle are Item 1, *Safety Glazing Material for Use Anywhere in Motor Vehicle,* and Item 10, *Bullet Resistant Glass for Use Anywhere in Motor Vehicle.*

On December 8, 1980, NHTSA granted a petition for rulemaking filed by Saint-Gobain Vitrage (SGV) regarding Standard No. 205. SGV requested that NHTSA amend this standard to permit the use of glass-plastic windshields such as "Securiflex", a product SGV manufactures. The Securiflex windshield is made of laminated glass to which a layer of polyurethane is bonded on the inboard side. Over 30,000 European Peugeot's and Audi's have Securiflex windshields. In addition, the NHTSA's Research Safety Vehicle has been equipped with that type of windshield for evaluation purposes.

The petition states that such glass-plastic windshields reduce the risk of lacerations to a car occupant who stikes the windshield in an accident. However, the glazing used in Securiflex does not qualify as Item 1 glazing because the interior plastic side fails Test No. 18, *Abrasion Resistance,* of the standard. In its petition, SGV urges the agency to apply Test No. 18 only to the exterior side of plastic-coated glazing.

SGV's petition followed the issuance of an interpretation by NHTSA that Standard No. 205 requires testing on both sides of glazing materials, including glass-plastic glazing. NHTSA issued that interpretation for the following reasons. When ANS Z26 was drafted, almost all types of glazing material were symmetrical—i.e., both sides of the glazing were made of the same substance. As a result, the glazing tests do not generally state that both sides of the glazing are to be tested. Thus, the standard provides for testing both sides of the glazing or for freely selecting which side to test. Since either side may be tested, both sides must comply. This result is consistent with the treatment of multiple glazing units, i.e., glazing whose material on one side differs from the material used on the other. ANS Z26 specifies that certain tests must be performed on both sides of multiple glazing units. For example, Class 2 multiple glazed units that are to be used in the windshields of motor vehicles must meet the requirements of Test No. 18, *Abrasion Resistance,* on both sides of the glazing. (ANS Z26 defines multiple glazed units, Class 2 as those

multiple glazed units in which any component single layer or laminated layer does not comply with the appropriate requirements of the code.) NHTSA reaffirms this interpretation.

The Securiflex windshield is an innovation in automotive glazing. The windshield in virtually every car in the U.S. today is a "safety" or "High Penetration Resistant" (HPR) windshield made solely of laminated glass. (ANS Z26 defines laminated glass as two or more sheets of glass held together by an intervening layer or layers of plastic material.) This type of windshield was first provided as standard equipment on motor vehicles over twenty years ago. Early HPR windshields consisted of two layers of glass, each having a thickness of one-eighth inch, bonded to either side of a thin sheet of polyvinyl butyral. The layer of plastic acted as a barrier to prevent the occupant's head from completely penetrating the windshield when the occupant struck the glazing during a collision. However, on impact both the inner and outer glass layers tended to shatter, allowing glass splinters to shower into the passenger compartment, and leaving edges of broken glass on the inner surface. In later years, small changes were made in this basic formulation. The plastic layer was doubled in thickness to improve its retention ability, and the layers of glass were made thinner to increase their flexibility and thus to improve their impact characteristics. In general, however, the basic construction and safety characteristics of HPR windshields have remained unchanged.

NHTSA is interested in glass-plastic windshields such as Securiflex and in other such innovative types of glazing that alleged to reduce laceration injuries in collisions. SGV contends that the Securiflex windshield reduces the risk of lacerations to car occupants who strike the windshield in an accident because the plastic inner layer prevents the occupant from coming into contact with the sharp glass edges when the windshield is struck and broken. Tests by Patrick and Chou at Wayne State University simulating the degree of lacerative injuries using a Part 572 adult dummy with a leather face modification indicate that substantial injury reduction is possible. They report no lacerations at velocities up to 40 MPH using Securiflex, while standard HPR windshields caused substantial lacerations at 15 mph. Use of glass-plastic glazing in side windows might also reduce a significant number of injuries.

Despite the use of HPR windshields, there are, according to NHTSA estimates, more than 210,000 laceration injuries to passenger car occupants each year due to broken windshield glass. (See NHTSA's July 1980 report, "Glass Related Injuries on NCSS.") Another 100,000 such injuries resulted from broken side window glass. A proportionately smaller number of lacerative injuries are thought to occur in light trucks, vans and multipurposes passenger vehicles. While very few of these injuries are life-threatening, many cause disfigurement and thus result in varying degrees of emotional and psychological impairment. Based on a partial count of medical costs, SGV estimates that use of glass-plastic windshields such as Securiflex could save $16 to $19 million annually.

However, the agency is concerned that glass-plastic glazing such as Securiflex could exhibit other characteristics that present safety hazards to vehicle occupants. Both the outside and inside of a windshield must be capable of withstanding certain environmental conditions. It is clear that the outside of a windshield must give protection against rain, snow, mud, dirt, stones, and other flying objects that impact the windshield. It must be able to withstand the rough abrasive wear of the windshield wipers rubbing salt, sand, mud and other abrasives across the surface of the windshield. The inside of the windshield, on the other hand, needs to resist dirt, chemicals, and smoke. Both the interior and exterior sides must be able to withstand these varied factors without significant loss of visibility.

There are several areas that require further study before the agency can determine whether to propose any amendments to Standard No. 205. The most important concern is whether the inner plastic side of glass-plastic glazing materials such as Securiflex can adequately resist abrasion. Plastic does not resist the surface damage caused by rubbing and scuffing as well as glass. Abrasion produces haze which scatters the light passing through the glazing in a way that makes vision through the glazing very difficult.

The problem of abrasion is less severe on the inside than on the outside, but still important. The outside of a windshield is typically abraded by the operation of the windshield wipers. The abrasion is exacerbated by the film of dirt and grit that develops on that side of the windshield. Abrasion of the interior side of the windshield results primarily from cleaning the inside of the windshield with chemicals and cloths.

Permitting the use of glass-plastic glazing with low resistance to abrasion may create a safety problem. Plastic materials such as the polyurethane layer of Securiflex generally cannot pass the abrasion tests specified in ANS Z26 for glass. For this reason, Standard No. 205 currently precludes the use of plastic materials in critical locations needed for driving visibility such as the windshield. This prohibition minimizes the risk of the driver's view being obscured by haze.

Another possible problem of concern to the agency is delamination. The Securiflex windshield consists of four layers of glass and plastic bonded together. As the number of bonding layers increases, the probability of a bonding failure may increase. Such delamination may result in vision distortion and optical deviation and thus present a safety hazard to drivers.

Other considerations of a more practical nature may also pose unanticipated risks. Among these are rearview mirror attachment to the windshield, attachment and removal of windshield decals such as state inspection stickers (the law in many states requires those stickers to be placed on the inside of the windshield), ability of the plastic coating to withstand body repair shop paint bake ovens, and ability of the coating to withstand inboard frost accumulation and its removal.

To address these concerns, SGV proposed several modifications to Standard No. 205 in its petition. If adopted, these changes would permit the use of glass-plastic windshields such as Securiflex that meet performance requirements less stringent than those presently in the standard. These provisions are substantially similar to the requirements for glass-plastic windshields which have been proposed by the Economic Commission for Europe (ECE Standard WP–29, Annex 9). SGV's proposal is set forth below verbatim:

Section 571.205 of Title 49 of the Code of Federal Regulations is amended to include the following provisions:

S5.1.3. In addition to the glazing materials specified in ANS Z26, "glass-plastic glazing materials" conforming to S5.1.3.1 may be used anywhere in a motor vehicle if it conforms to the testing requirements of S5.1.3.2.

S5.1.3.1. A "glass-plastic glazing material" consists of a glass laminate having an inboard layer of plastic bonded to the interior surface.

S5.1.3.2. The "glass-plastic glazing materials" must comply with the following test grouping, as modified in Section 5.1.3.3 and Section 5.1.3.4 below:

Test No. 1, Light Stability
Test No. 2, Luminous Transmittance
Test No. 3, Humidity
Test No. 4, Boil
Test No. 9, Impact (Dart Test, 30-Foot Drop)

Test No. 12, Impact (Ball, 30-Foot Drop)
Test No. 15, Optical Deviation and Visibility Distortion
Test No. 16, Weathering
Test No. 17, Abrasion Resistance
Test No. 18, Abrasion Resistance
Test No. 19, Chemical Resistance
Test No. 24, Flammability (Over 0.050 Inch in Thickness)
Test No. 26, Penetration Resistance (5 lb. Ball, 12-Foot Drop)

S5.1.3.3. Tests 9, 16 and 18 shall be conducted so that the test is directed against the face of the specimen which would be glazed to the exterior of the vehicle. Tests 17, 19, 24, and 26 shall be conducted so that the test is directed against the face of the specimen which would be glazed to the interior of the vehicle.

S5.1.3.4. "Glass-plastic glazing material" specimens tested in accordance with Abrasion Resistance Test 17 shall be carefully rinsed with distilled water after abrasion and carefully wiped with dry lens paper.

The arithmetic mean of the percentage of light scattered by the three specimens of glass-plastic glazing material tested in accordance with Abrasion Resistance Test 17 shall not exceed 4.0 percent.

S5.1.3.5. The number of specimens to be submitted for testing glass-plastic glazing materials shall be as follows:

(a) Twenty-seven 12 x 12-inch substantially flat specimens;

(b) Seven 4 x 4-inch flat specimens having both surfaces substantially plane and parallel with a 1/4-inch diameter hole centrally drilled therethrough;

(c) Three 2 x 6-inch substantially flat specimens;

(d) Ten 1 x 7-inch substantially flat specimens;

(e) Three 1/2 x 6-inch substantially flat specimens.

To aid in its research and development work concerning appropriate performance requirements for glass-plastic glazing materials, the agency solicits any information and data that are available to answer the following questions:

1. What is the relationship between light transmittance and haze (caused by either abrasion or chemical action) for glass-plastic glazing materials? How is this relationship affected by the age of the glass-plastic material?

2. Do the anti-lacerative properties of glass-plastic windshields, such as the Securiflex windshield, outweigh the problems of visibility distortion that may result with this type of windshield? What effect will the equipping of new cars with automatic occupant restraints have on the benefits that can be gained from glass-plastic glazing? Can the current abrasion requirements for glass-plastic glazing be reduced without creating unacceptable visibility problems? If so, how much reduction can be made?

3. Are other types of glass-plastic windshields available (or windshields made of other materials) which have the same anti-lacerative properties of Securiflex and which can also comply with the current abrasion resistance requirements of the standard on both the outside and the inside of the windshield?

4. What is the effect of age and environmental conditions on the optical and mechanical properties of glass-plastic glazing?

5. What special problems exist regarding the care and handling of plastic-coated glazing materials? If glass-plastic windshields are used in motor vehicles, should warning labels be present to instruct consumers regarding the proper methods of cleaning and handling?

6. What special types of manufacturing, fabrication and quality control problems are currently being encountered in the industry with regard to the following aspect of glass-plastic glazing: delamination (i.e. failure of the bonding between the glass and plastic layers); chemical stability over time; optical integrity, out-gassing; flammability?

7. Are the specifications proposed by SGV as set forth earlier in this notice adequate to ensure that the current safety level of windshields is not degraded? Are other performance requirements in addition to those specified by SGV necessary for the plastic side of windshields?

8. Should there be a performance requirement for the degree of anti-lacerative protection provided? If so, what requirements should be adopted?

9. Should there be performance requirements concerning discharge of static electricity, outgassing compatibility, color identification, visibility after breaking, and slide motion?

10. Should there be performance requirements to ensure adequate bonding durability during a crash to prevent delamination? Also, are performance requirements necessary to ensure that delamination does not occur as a result of moisture and other environmental conditions? If so, what requirements should be considered?

11. What is the cost-differential between using glass-plastic glazing instead of the glazing currently used in windshields and side windows? What are the repair and replacement costs of glass-plastic glazing?

12. Is there any accident data available on vehicles having glass-plastic glazing? If so, does this data show that such glazing reduces the risk of lacerations to vehicle occupants who strike the windshield in an accident?

In furtherance of this rulemaking proceeding, NHTSA intends to conduct further study regarding the various problems and questions raised in this notice. Primary attention will be given to the following areas:

1. Identifying specific methods and engineering tests to assess the suitability of glass-plastic glazing and other asymmetrical glazing for safe automotive use.

2. Assessing the consistency of measurements of light transmittance through glass and plastic.

3. Assessing the adequacy and consistency of current mechanical abrasion methods to measure the abrasion resistance properties of glass and plastic.

4. Determining the adequacy of current methods used to measure haze and distortion in glass and plastic glazing materials.

The agency also solicits any data or information which would be useful in furthering these activities.

Further action on this rulemaking proceeding will not occur without additional notice and opportunity for comment.

This notice has been evaluated under the criteria of E.O. 12221 and implementing Departmental guidelines. Due to the agency's lack of data relating to cost and certain other matters and to the uncertainty about the type and level of requirements and test conditions that might be proposed, the agency cannot at this point determine the impacts of permitting the use of glass-plastic glazing in windshields. A full discussion of the regulatory impacts will be prepared and made available for public comment in the event that a proposal is issued.

The lawyer and engineer primarily responsible for the development of this notice are Joan Griffin and Edward Jettner.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address

given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 19, 1981.

Carl Nash,

Acting Associate Administrator for Rulemaking.

[FR Doc. 81-2478 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Speedometers and Odometers

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking filed by the General Motors Corporation (GM) regarding Safety Standard No. 127, *Speedometers and Odometers.* GM petitioned NHTSA to delete all requirements relating to odometers from this standard. GM requested this action because it contends that there is no demonstrable safety need for these provisions. NHTSA is denying the petition because the agency disagrees with GM's contentions and believes that the odometer requirements will in fact provide a reasonable safety benefit to the public at low cost.

FOR FURTHER INFORMATION CONTACT: Mr. John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone: 202–426–2720).

SUPPLEMENTARY INFORMATION: The purpose of this notice is to deny a petition for rulemaking filed by the General Motors Corporation (GM) regarding Safety Standard No. 127, *Speedometers and Odometers* (49 CFR 571.127). With respect to odometers, Standard No. 127 is intended to reduce the incidence of odometer tampering in order to prevent consumer fraud and the presence of potentially dangerous vehicles on the nation's highways. If odometers are made more tamper resistant, fewer vehicles will have odometers that have been altered. As a result, consumers who purchase used vehicles will know the actual mileage of their vehicles. The mileage of a car is an important indicator of the vehicle's operating condition. Knowledge of the actual mileage is necessary if vehicle owners are to follow the manufacturers' recommended preventive maintenance schedules and have the necessary safety-related repairs made. If an odometer is altered so that it understates a vehicle's total mileage, the purchaser of that vehicle may be lulled into a false sense of security about the condition of the vehicle. The purchaser may fail to check his or her vehicle adequately, forego preventive maintenance or be unwilling to invest in needed repairs. Failure to prevent, detect or correct defects in the vehicle could result in an accident that causes death, injury, or property damage. The agency has estimated that the odometer provisions could prevent as many as 660 such accidents each year, if the requirements are only 25% effective in preventing tampering.

In its petition, GM requests that the agency rescind all of the odometer requirements. The petitioner claims that NHTSA's estimates of the safety benefits are based on three "arbitrary and unreasonable assumptions" regarding the extent of odometer tampering, the number of vehicles that have tampered odometers that are involved in accidents, and the effectiveness of the requirements. GM asserts that if the quantifications of these assumptions are modified slightly, the benefits projected by the agency would be virtually eliminated.

NHTSA has determined that GM's petition must be denied. As detailed below, the agency concludes that the petitioner's contentions are without merit. Contrary to GM's assertions, NHTSA finds that the odometer requirements will prevent accidents and thus provide a significant safety benefit to the public. Moreover, the agency estimates that the cost of this benefit to the public is very low, at most $1.50 per vehicle.

GM challenges NHTSA's estimate that 35 percent of the entire motor vehicle population (50% of all used cars) has experienced odometer tampering. The petitioner states that "[i]n order to achieve this penetration of tampered odometers, it must be assumed that one out of every three persons engaged in selling used cars (both dealers and private citizens) is knowingly engaged in illegal activity." This assumption, according to GM, is "a significant exaggeration." NHTSA disagrees with GM's rationale. If one out of every three vehicles has a tampered odometer, it does not necessarily mean that one out of every three persons selling used cars has tampered with the odometer. "Shady", high volume dealers who consistently roll back the odometers on the cars they sell could account for many of the affected vehicles. NHTSA believes that the original estimate of 35 percent is reasonable, especially in light of reports from automobile dealers associations and state enforcement officials that 60–70 percent of the vehicles sold at automobile auctions have tampered odometers. A substantial number of used cars are sold at auto auctions each year.

The second point that GM criticizes in its petition is NHTSA's assumption "that 'one in 50' (2%) of the vehicles that have tampered odometers will be involved in

an accident, 'which would not have occurred had there not been tampering.'" The Economic Impact Analysis states that 3 percent of all accidents are attributable to vehicular defects and mechanical failures. GM contends that this assumption means that "two-thirds (2/3) of all accidents caused by mechanical failurers or defects on tampered vehicles would be prevented if the driver knew the actual mileage." GM asserts that this is "patently unreasonable and specious." NHTSA finds that General Motors has misunderstood the basic assumption made by the agency and as a result conducted an incorrect analysis. NHTSA did not assume, as the petitioner states, that two (2) percent of *all accidents from all causes* involving vehicles with altered odometers would not have occurred had there not been tampering. Rather, the agency assumed that two (2) percent of *all accidents caused by mechanical failures or vehicular defects* in vehicles having tampered odometers occurred as a result of the odometer tampering. This number is only two (2) percent of the three (3) percent of all accidents that are attributable to mechanical problems. NHTSA finds that its estimate about the effect of more tamper resistant odometers is reasonable. Studies contracted by the agency have shown that the failure rate of vehicle components increases as the vehicle's mileage increases. Thus, owners of vehicles with seemingly low mileage can reasonably expect their vehicles to have safer components than those vehicles having much higher mileage. Other studies have identified vehicle defects as a major cause of accidents. Knowledge of correct vehicle mileage will reduce such accidents.

Finally, GM challenges NHTSA's determination that the standard will be 25 percent effective in preventing odometer tampering. The petitioner contends that this assumption is unreasonable, as "many means of tampering will still exist in spite of the standard." The NHTSA effectiveness estimate takes into account the fact that the odometer provisions will not entirely prevent tampering. However, by addressing the more common methods of tampering and increasing the likelihood that tampering will be detected when it does occur, the standard will significantly reduce tampering and its effects. Thus the agency believes that this assumtion is reasonable. The agency notes that GM has not substantiated any other effectiveness estimate.

In summary, NHTSA finds that GM's arguments are without merit. Since the odometer provisions of Standard No. 127 will provide a significant safety benefit to the public at low cost, the agency denies GM's petition to eliminate these requirements.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 19, 1981.

Carl Nash,

Acting Associate Administrator for Rulemaking.

[FR Doc. 81-2544 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 46, No. 16
Monday, January 26, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 171]

Resolution and Order Approving the Application of the Panama City Port Authority for a Foreign-Trade Zone in Panama City, Florida; Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Panama City Port Authority, A Florida municipal corporation, filed with the Foreign-Trade Zones Board (the Board) on January 4, 1980 requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at the port complex and industrial park of Port Panama City, within the Panama City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied with regard to the request for a general-purpose zone, approves the application, subject to the conditions outlined below concerning the proposed steel pipe plant operation of Berg Steel Pipe Corporation (BSPC).

With regard to the BSPC operation, while the Board took into account the area's need for a broader economic base to relieve its high level of unemployment, because of public policy considerations relating to the impact of this type of operation on the domestic steel industry, the following conditions are adopted: (1) The operation is approved for a five year period from the commencement of zone operations at the BSPC plant, subject to extension upon application of the zone grantee. At the conclusion of four years the operation shall be reviewed in terms of public policy considerations, and the Board will consider such matters as: the level of exports, the extent of import displacement, and the extent to which purchases of domestic steel plate and other materials are being made. (2) If an antidumping (AD) or countervailing (CV) duty order, or a Trigger Price Mechanism (TPM) or substitute procedure, is in effect on a foreign product admitted into the zone, BSPC will be required to request privileged foreign status (PF) for such products when they are to be transformed to a new and different tariff classification and subsequently transferred to the Customs territory. The products so transferred will be subject to AD, CV, and TPM administrative requirements, including Special Summary Steel Invoice (SSSI). Transformed products to be exported will not be subject to those administrative requirements. PF status will not be required of such products which are not to be so transformed, but they will be subject to AD, CV, TPM administrative requirements, including SSSI, upon transfer to the Customs territory.

As the zone area includes open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, and Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Panama City, Florida

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Panama City Port Authority, a Florida municipal corporation, (the Grantee) has made application (filed January 4, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Panama City, within the Panama City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 C.F.R. Part 400) are satisfied with regard to the proposed general-purpose zone; and,

Whereas, the Board, pursuant to its authority to restrict or prohibit operations detrimental to the public interest (19 U.S.C. 81o(c)), considered the possible impact of the proposed steel pipe plant operation of Berg Steel Pipe Corporation (BSPC) within the zone, taking into account other Government actions and programs which attach conditions to steel imports;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 65 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The operation of the proposed steel pipe plant by Berg Steel Pipe Corporation shall be subject to the conditions and restrictions enumerated in the resolution appearing in the prefatory part of this Order.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any other manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 16th day of January 1981, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Philip M. Klutznick,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 81-2455 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Pennwalt Corp., Intent To Grant Foreign Limited Exclusive Patent License

Notice is hereby given that the National Technical Information Service (NTIS) proposes to grant to Pennwalt Corporation (PC) of Three Parkway, Philadelphia, Pennsylvania 19102 a limited exclusive right in the United States and in some or all of a group of foreign countries including Australia, Belgium, Canada, France, West Germany, Great Britain, Italy, Japan, Netherlands, Spain and Switzerland for the manufacture, use and sale of the products and processes embodied in the following U.S. Government-owned invention covered by U.S. Patents 4,073,939 and 4,036,987 "Control of Nematodes and Other Helminths" and foreign patent application counterparts in the countries listed herein, the rights being assigned to the United States of America as represented by the Secretary, U.S. Department of Commerce as to the foreign applications. Custody of the U.S. rights to the invention has also been transferred to the Secretary, U.S. Department of Commerce.

Copies of the U.S. patents listed herein can be purchased from the Commissioner of Patents and Trademarks, Washington, D.C. 20231 at a cost of $0.50 per copy.

With respect to the U.S. Government-owned invention identified herein a public announcement stating that the invention was available for licensing in the United States and perhaps also in foreign countries was published in the Federal Register (FR) shortly after each U.S. patent application was filed and after each U.S. patent was issued. These announcements were made more than six months prior to this notice. The application for U.S. Serial Number 631,259 was filed on November 12, 1975 and announced in the Federal Register of August 4, 1976, p. 32625; in the NTIS publication *Government Inventions for Licensing* of June 7, 1976, p. 365; and in the *Official Gazette* of the Patent and Trademark Office of September 14, 1976, p. 438. To date, these and other promotional efforts have not resulted in the request for, or granting of, any successful licenses under these patents. One royalty-free nonexclusive license granted to Symbex of California, Inc., 1104 North School Street, Stockton, California 95205 on May 9, 1978 was revoked because of lack of research activity or plans for additional development on November 30, 1980. It has been determined by the Director, NTIS therefore, in accordance with the Federal Property Management Regulations for Licensing of Government-owned Inventions 41 CFR 101-4.103.3, that this invention is available for limited exclusive license.

The limited exclusive license proposed to be granted by NTIS to PC will be a royalty-bearing license for a term of five years from the date of Government regulatory approval for sale in the United States and five years from first commercial sale in each licensed foreign territory, but not exceeding eight years from the effective date of the license agreement. The license will be revocable in accordance with 41 CFR 101-4.104.5.

The proposed limited exclusive license granted to PC will be subject to an irrevocable, nonexclusive nontransferrable, royalty-free right in the U.S. Government to make, use or sell the licensed invention throughout the world by or through contract on behalf of the U.S. Government or any foreign government pursuant to a treaty or agreement with the United States.

The proposed limited exclusive license will be granted by NTIS to PC March 27, 1981, unless NTIS receives (1) an application for a nonexclusive license from a responsible U.S. applicant to practice the invention identified herein in the United States or foreign countries listed herein and NTIS determines that such applicant is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or (2) written evidence and argument which establishes that it would not be in the public interest to grant the proposed limited exclusive license to PC.

Written data, inquiries, comments or objections concerning this proposed limited exclusive license should be submitted to the Office of Government Inventions and Patents, National Technical Information Service, Springfield, VA. 22161. NTIS shall maintain and make available for public inspection a record of all decisions made in this matter and the basis therefor. This record shall contain copies of all written data, inquiries, comments, or objections received by NTIS and pertaining to the proposed limited exclusive license.

Dated: January 12, 1981.

Melvin S. Day,

Director, National Technical Information Service.

[FR Doc. 81-2620 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-04-M

COMMUNITY SERVICES ADMINISTRATION

Notice to all Boards of Directors of Community Action Agencies (CAAs) and State Economic Opportunity Offices (SEOOs)

AGENCY: Community Services Administration.

ACTION: Notice to All Boards of Directors of CAA(s) and to all SEOO(s)

SUMMARY: The Community Services Administration is notifying all boards of Directors of Community Action Agencies (CAAs) and State Economic Opportunity Offices (SEOOs), in accordance with section 222(a) of the Economic Opportunity Act of 1964, as amended (the Act), that a decision has been made to fund the following organizations: National Consumer Law Center and Citizens Labor Energy Coalition Foundation. These organizations will implement energy programs under section 222(a)(5) of the Act.

DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Saul, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506. Telephone: (202) 632-6503 Teletypewriter: (202) 254-6218.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.)

Richard J. Rios,

Director.

[FR Doc. 81-2718 Filed 1-23-81; 8:45 am]

BILLING CODE 6315-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Kawasaki Motors Corp., U.S.A.; Provisional Acceptance of Consent Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of Consent Agreement and Order.

SUMMARY: Published below is a Consent Agreement and Order in the matter of Kawasaki Motors Corp., U.S.A., which the Commission has provisionally accepted and is publishing for public comment. If finally accepted, the Consent Agreement and Order resolve the staff's allegations that Kawasaki failed to report to the Commission, as required by the Consumer Product Safety Act, a defect which could create a substantial product hazard in certain of its snowmobiles.

DATES: The Commission will accept comments on this provisionally-accepted Consent Agreement and Order until January 29, 1981.

ADDRESS: Comments on the Consent Agreement and Order should be sent to the Office of the Secretary, Suite 300, 1111-18th St., NW., Washington, DC 20207.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Melvin Kramer, Trial Attorney, Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6608.

SUPPLEMENTARY INFORMATION: [Attached].

Dated: January 21, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[CPSC Docket No. —]

In the Matter of Kawasaki Motors Corp. U.S.A., a corporation.

Consent Agreement and Order

This agreement is made by and between Kawasaki Motors Corp. U.S.A., a corporation (hereafter "Kawasaki"), and the staff of the Consumer Product Safety Commission (hereafter "staff"); and is a settlement pursuant to 16 CFR 1025.26. Attached to this Consent Agreement and incorporated in it by reference is an Order which Kawasaki and the staff agree to have the Consumer Product Safety Commission (hereafter "Commission") issue upon final acceptance of the Consent Agreement. This Order shall then constitute the final decision and order of the Commission within the meaning of 16 CFR 1025.52.

It is hereby agreed by and between Kawasaki, by its duly authorized officers, and counsel for the Commission that:

1. Kawasaki is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 2009 E. Edinger Ave., Santa Ana, California, 92711.

2. The Commission has jurisdiction over the subject matter of this Consent Agreement and Order and over Kawasaki under the Consumer Product Safety Act (hereafter "CPSA") (15 U.S.C. 2051 *et seq.*).

3. The Commission Order, attached hereto and incorporated by reference, is issued under Sections 15(b), 19(a)(3), 19(a)(4) and 20(a) of the CPSA (15 U.S.C. 2064(b), 2068(a)(3), 2068(a)(4) and 2069(a)). This Order resolves all staff allegations set forth in paragraph 6 below. The Order shall take effect upon its issuance by the Commission and its service on Kawasaki.

4. This Agreement and Order apply to Kawasaki's 1978 and 1979 Invader and Intruder model snowmobiles presently equipped with a two-rivet, molded grouser bar, internal drive lugtype track designed and manufactured by Kawasaki and by the Goodyear Tire and Rubber Company (hereafter "the MGB track"). Kawasaki sold approximately 19,000 such snowmobiles originally equipped with the MGB track in the United States and supplied another approximately 2,700 tracks to be utilized as replacement parts. Approximately 2,500 of the approximately 19,000 snowmobiles sold in the United States have already been refitted with a replacement track of the type to be used in the voluntary corrective action plan submitted by Kawasaki and accepted by the Commission.

5. The snowmobiles described in paragraph 4 are consumer products as that term is defined in Section 3(a)(1) of the CPSA (15 U.S.C. 2052(a)(1)).

6. Because of the staff's belief that for a number of months Kawasaki had information which reasonably supported the conclusion that the MGB track described in paragraph 4 above contained a defect which could create a substantial product hazard prior to reporting such information to the Commission pursuant to Section 15(b) (15 U.S.C. 2064(b)), the staff alleges that Kawasaki violated Sections 19(a)(3) and 19(a)(4) of the CPSC (15 U.S.C. 2068(a)(3) and 2068(a)(4)).

7. Without admitting the existence of a substantial product hazard or a violation of any reporting requirement under Section 15(b) of the CPSA (15 U.S.C. 2064(b)), Kawasaki agrees to pay to the Commission, in accordance with the Order attached hereto, the sum of $90,000. This Consent Agreement and Order constitutes a complete settlement and resolution of any violation of the reporting requirements of Sections 15(b), 19(a)(3), 19(a)(4) and 20(a) that have been or may be alleged on the basis of the information that the Commission staff currently possesses concerning the hazard associated with the MGB track.

8. Kawasaki knowingly, voluntarily and completely waives any rights it may have in this matter: (1) To a fuller statement of the staff's allegations; (2) to an administrative or judicial hearing or any other procedural steps, including the issuance of a Complaint; (3) to seek judicial review of, or contest, the validity of the attached Order; and (4) to a statement of findings of fact and conclusions of law by the Commission under Sections 15 (b), (c), (d), or (e), 19(a)(3) and 19(a)(4) of the CPSA (15 U.S.C. 2064 (b), (c), (d), or (e), 2068(a)(3) and 2068 (a)(4)).

9. Upon execution of this Agreement by Kawasaki and the Commission staff and provisional acceptance by the Commission, this Agreement and Order will be placed on the public record, on the Commission's Public Calendar, and in the Federal Register, pursuant to 16 CFR 1115.20(b).

10. Upon final Commission acceptance, the Commission will make this Consent Agreement and Order

available for public viewing at the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

11. Kawasaki understands that it is the position of the Commission that, after the attached Order has been issued by the Commission, the Order may be modified or set aside pursuant to 16 CFR 1025.58.

12. Without prior notice to Kawasaki, the Commission and its staff may (a) make public the provisions of the Consent Agreement and Order and of the voluntary corrective action plan referred to in paragraph 4 above; (b) reissue the joint press release required under the voluntary corrective action plan; (c) make public statements based upon and limited to applicable provisions of the CPSA or CPSC regulations; and (d) make public a written statement of the basis for the staff's allegation as set forth in paragraph 6 above. Except as provided above, the Commission understands that Kawasaki has not waived its rights under Section 6 of the CPSA (15 U.S.C. 2055). Nothing in this paragraph or in this Consent Agreement and Order limits in any fashion any Commissioner from issuing and distributing any concurring or dissenting opinion.

13. The signing of this Consent Agreement does not consitute an admission by Kawasaki that a reporting or other violation has occurred as described in paragraph 6 above, or otherwise.

14. No agreement, understanding, representation, or interpretation not contained in this Consent Agreement and Order may be used to vary or to contradict its terms.

Signed this 8th day of January 1981.

Kawasaki Motors Corp. U.S.A.

Roger F. Hogie,

For Kawasaki Motors Corp. U.S.A.

Melvin I. Kramer,

Counsel for the Consumer Product Safety Commission.

By direction of the Commission, this Consent Agreement and Order are provisionally accepted pursuant to 16 CFR 1115.20(b) (3) and (4) and shall be placed on the public record. The Commission shall announce provisional acceptance of the Consent Agreement and Order in the Commission's public calendar and in the Federal Register. So ordered, by direction of the Commission, this —— day of January 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

By direction of the Commission, this Consent Agreement and Order are hereby finally accepted and issued as an Order of the Consumer Product Safety Commission.

By direction of the Commission, it is hereby ordered this —— day of January 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[CPSC Docket No.]

In the Matter of Kawasaki Motors Corp. U.S.A., a corporation.

Order

The Commission staff and Kawasaki having entered into a Consent Agreement whereby Kawasaki has agreed to pay, pursuant to Section 20 of the Consumer Product Safety Act ("the Act"), the sum of $90,000 in consideration of the undertakings of the Commission set forth in the Agreement, and the Commission having approved the terms of the Consent Agreement;

It is therefore ordered that Kawasaki, within 20 days of the service of this Order upon them, pay to the Commission, pursuant to Section 20(b) of the Act, the sum of $90,000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 81-2817 Filed 1-22-81; 9:55 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Intent To Prepare Environmental Impact Statement (EIS)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) for the management of transuranic (TRU) waste buried and stored at the Radioactive Waste Management Complex (RWMC) of the Idaho National Engineering Laboratory (INEL).

SUMMARY: The DOE announces its intent to prepare an EIS in accorance with Section 102(2)(C) of the National Environmental Policy Act (NEPA) to assess the environmental implications of proposed actions for the long-term management of transuranic waste at the RWMC. This EIS will provide the basis for decisions concerning the long-term management of the buried TRU waste, selection of a waste processing method for stored waste, and for buried waste, if necessary, and location of a processing facility. The selection of a long-term management alternative for stored waste (i.e., geologic disposal) was discussed in the Final EIS for the Waste Isolation Pilot Plant, DOE/EIS-0026.

Interested agencies, organizations, and the general public desiring to submit comments or suggestions for consideration in connection with the preparation of the EIS are invited to do so.

No scoping meeting is scheduled in connection with the preparation of this draft EIS. However, should public comment to DOE in response to this notice of intent indicate that a scoping meeting is appropriate, one will be scheduled. Upon completion of the draft EIS, its availability will be announced in the Federal Register, at which time comments will again be solicited.

Written comments may be submitted to: Mr. J. B. Whitsett, Chief, Radioactive Waste Programs Branch, U.S. Department of Energy, Idaho Operations Office, 550 2nd Street, Idaho Falls, Idaho 83401 (208) 583-1709.

For general information on the EIS process contact: NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Attn: Mr. Richard P. Smith, Room 4G-064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-4610.

Background Information: The INEL was established in 1949 by the Atomic Energy Commission (AEC) for the construction, operation, and testing of nuclear facilities, reactors, and equipment. The INEL occupies 894 square miles of the semiarid Snake River Plain in southeastern Idaho. The RWMC was established in the southwestern corner of the INEL in 1952 as a controlled area for management of solid radioactive waste generated by INEL operations. The RWMC encompasses 144 acres, of which 88 acres contain buried waste (the Subsurface Disposal Area) and 56 acres contain waste temporarily stored above ground. The closest major population center to the RWMC is Idaho Falls, approximately 50 miles to the east.

In 1954, the RWMC started receiving TRU waste produced in national defense programs. Most of this defense waste has come from the Rocky Flats Plant in Colorado, although waste from other operations of the AEC and its successor agencies has also been received.

Procedures for TRU waste management at the RWMC have changed over the years. Before November 1970, the TRU waste was placed in pits or trenches in the

Subsurface Disposal Area. From 1960 through 1964, the TRU waste at the RWMC was buried in the same locations as solid waste contaminated with beta- and gamma-emitting radionuclides only (beta-gamma waste). Some intermixing of the two types of waste resulted.

Approximately 2.2 million cubic feet of TRU waste was originally buried in the Subsurface Disposal Area. Experimental projects to test the feasibility of retrieving the buried waste have reduced the volume to approximately 2 million cubic feet. The beta-gamma waste intermixed with the TRU waste totals an additional estimated 500,000 cubic feet. The estimated total buried TRU waste at the Subsurface Disposal Area is 2.5 million cubic feet.

In March 1970, the AEC instituted a national policy that waste known or suspected of being contaminated with transuranic nuclides above a defined level be segregated from other types of waste. Such waste was to be packaged and managed so as to be retrievable, in contamination-free packages, for an interim period of 20 years. Beyond that period, retrievability was still to be possible. Thus, beginning in November 1970, INEL waste known or suspected of having transuranic contamination above a defined level was stored retrievable above the ground on asphalt pads in the Transuranic Storage Area, and then covered successively with plywood, plastic sheeting, and soil. Currently there are approximately 1.4 million cubic feet stored in this area. It is estimated that by 1985 about 2 million cubic feet of TRU waste will be in above-ground storage.

The total quantity of TRU waste, both buried and stored, is approximately 3.9 million cubic feet. By 1985, that quantity is estimated to be 4.5 million cubic feet.

Although environmental monitoring has not identified any near-term public hazards from the TRU waste, DOE, believes that a coordinated strategy is needed for its long-term management. The strategy must be consistent with the principal objective of the national waste management program: to isolate radioactive wastes from the biosphere in an environmentally safe and acceptable manner.

The EIS will provide environmental, technical and socioeconomic input to specific decisions on the long-term management of the buried TRU waste, the choice of processing methods for stored TRU waste and for buried waste, if necessary, and the location of a processing facility, if one is determined to be necessary.

The programmatic decision on the long-term management of the stored TRU waste has been addressed in the "Final Environmental Impact Statement: Waste Isolation Pilot Plant," whose availability was announced in the Federal Register on October 24, 1980. This document shows that TRU wastes can be placed in a geologic repository. Pertinent sections of that EIS will be summarized and incorporated by reference in this document in order to provide the reader with a complete understanding of all aspects of the TRU waste management program at INEL.

The programmatic decision on the long-term management of the buried TRU waste will be specifically addressed in the EIS being prepared. Alternatives currently under consideration include no action (leave buried waste in present location), in situ stabilization (improved the in-place confinement of the waste), and retrieve, process, and ship the waste to a Federal repository (a geologic repository will be used as the strategy for the disposal technology).

Implementation of an alternative, requiring construction of a processing facility, could begin as early as the late 1980's. Onsite storage of the processed waste could be provided, if necessary, until a Federal repository becomes available.

The draft EIS will analyze whether the proposed actions will preclude any reasonable alternative for management of other types of waste at the RWMC. Additionally, the draft EIS will address the cumulative effect of impacts from the proposed actions and impacts from reasonably forseeable future actions which may be taken with respect to other types of waste at the RWMC.

The purpose of this notice is to present pertinent background information regarding the proposed scope and content of the EIS and to solicit public input regarding the proposed actions and their alternatives.

Identification of Environmental Issues

The following issues, compiled from public and agency comments previously submitted, will be analyzed during the preparation of the EIS. This list is not intended to be all-inclusive nor is it intended to be a predetermination of impacts. Additional issues raised during the scoping process also will be considered.

1. The effects of potential natural phenomena, including seismic activity.
2. The potential contamination of the Snake River Plain Aquifer by radionuclides; also, potential upward migration of radionuclides in soil.
3. The effects of potential accidents and radioactive releases on human health and ecology.
4. The exposure of the public to radiation and associated long-term health effects.
5. The impacts of disposal in an offsite Federal repository.
6. Selection, design, and location of the processing facility.
7. Termination of waste shipments to the INEL.
8. The effects of the proposed actions on local communities.
9. The hazards of shipping waste to an offsite Federal repository.
10. Surface soil contamination at the RWMC and outside the RWMC boundary.

Alternatives Including the Preferred Actions: The environmental input from the EIS will be used in reaching three decisions.

1. The first decision is selection of a general method for long-term management of the buried TRU waste. The alternatives to be addressed are: (a) retrieve, process, and ship the waste to a Federal repository (assumes geologic repository as the planning strategy for waste disposal); (b) improve the in-place confinement of the waste; and (c) leave the waste in-place as is (delay action and no action).

As discussed previously, the corresponding selection of a general method for long-term management of the stored TRU waste has been addressed in the NEPA required documentation for the WIPP "Final Environmental Impact Statement: Waste Isolation Pilot Plant," DOE/EIS-0026-F, and will be summarized in this EIS.

2. The second decision is selection of a method for processing the waste prior to shipment, assuming that the retrieval alternative is implemented. Three processing methods will be considered for the stored waste: (1) a slagging pyrolysis incinerator, (2) packaging the waste in new containers, and (3) selectively overpacking any container whose integrity is suspect. Two processing methods will be considered for buried waste: (1) a slagging pyrolysis incinerator, and (2) packaging the waste along with contaminated soil in new containers. (Some of the original containers have seriously deteriorated, and soil immediately adjacent to the containers has become contaminated.) If the slagging pyrolysis incinerator method is selected, a single facility to treat both stored and buried TRU waste could be built. Several additional processing methods were considered in preliminary studies prepared as source documents for this EIS and in support of the WIPP EIS. Results of the preliminary studies were documented in "Environmental and Other Evaluations of Alternatives for Long-Term Management of Buried INEL Transuranic Waste," IDO-10085; and "Environmental and Other Evaluations of Alternatives for Long-term Management of Stored INEL Transuranic Waste," DOE/ET-0081 (revised). Based on these preliminary evaluations, the processing methods listed above were selected for detailed evaluation in this EIS.

3. The third decision is selection of the location of a processing facility. The

alternative locations to be considered are: (a) at the RWMC, and (b) at a Federal repository. If the processing facility were located at a Federal repository, some miminum amount of processing, such as packaging discussed above, would still be necessary at the INEL to prepare the waste for shipment.

Two additional evaluations will be included in the draft EIS. The first will address the mode of shipping for the waste. Only truck and rail shipments appear to be viable alternatives, considering the likely potential location of a Federal repository. The effects of both shipping modes will be evaluated and compared.

The second evaluation will address the routing for both rail and truck shipments. As one alternative, the rail and truck routes passing through large metropolitan areas will be evaluated. These results will generally provide the upper limit for expected effects on the public of transporting the waste. The other alternative to be evaluated is rail and truck routes that avoid densely populated areas. These results will generally illustrate the minimum expected effects of transporting the waste.

WRITTEN COMMENTS: Interested agencies, organizations, and the general public desiring to submit written comments for consideration in the preparation of this EIS should submit them to: Mr. J. B. Whitsett, Chief, Radioactive Waste Programs Branch, U.S. Department of Energy, Idaho Operations Office, 550 2nd Street, Idaho Falls, Idaho 83401.

Written comments postmarked by February 24, 1981, will be considered in preparation of the EIS. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION: Upon completion of this draft EIS, its availability will be announced in the Federal Register, and public comments will be solicited. Those who desire further information or copies of the documents cited here should contact Mr. Whitsett at the above address. Those who would like to receive a copy of the draft EIS for review and comment when it is issued should also notify Mr. Whitsett. Those seeking further information on the EIS process may contact: Mr. Richard P. Smith, NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Room 4G-064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-4610.

Dated at Washington, D.C., this 16th day of January 1981.

For the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 81-2558 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Ecomomic Regulatory Administration

[ERA Case No. 52416-9185-21,22-22; Docket No. ERA-FC-80-03]

Puget Sound Power and Light Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Availability of Tentative Staff Analysis.

SUMMARY: On August 5, 1980, Puget Sound Power and Light Company (Puget Sound) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for two permanent peakload powerplant exemptions from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.* (FUA or the Act), which prohibit the use of petroleum or natural gas in new powerplants.

Puget Sound plans to install two 81,000 KW natural gas/oil-fired combustion turbine units to be known as Frederickson Unit Nos. 1 and 2 in Pierce County, Washington. Puget Sound certifies that each of the units will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

ERA accepted the petitions pursuant to 10 CFR §§ 501.3 and 501.63 on October 2, 1980, and published notice of its acceptance in the **Federal Register**, on October 9, 1980 (45 FR 67126). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to section 701 of FUA and 10 CFR §§ 501.31 and 501.33 during which time interested persons were also afforded an opportunity to file comments and to request a public hearing on the petitions. The comment period ended November 24, 1980.

Comments were received from the Washington Utilities and Transportation Commission, Dr. J. Nichol Roehr of Health-Arnold Radiologists, Inc., and the Oil Heat Institute of Washington (OHIW). OHIW also requested that a public hearing be held in Seattle, Washington. ERA's staff has reviewed the information presently contained in the record of this proceeding. A Tentative Staff Analysis recommends that ERA issue an order which would grant the permanent peakload powerplant exemptions to Puget Sound. A copy of the Tentative Staff Analysis is available from the Office of Public Information at the address listed below.

DATES: Written comments on the Tentative Staff Analysis and requests for a public hearing are due on or before February 9, 1981.

ADDRESSES: Fifteen copies of written comments, and any requests for a public hearing should be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street N.W., Washington, D.C. 20461. Docket Number ERA-FC-80-031 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, Room 3012B, 2000 M Street, N.W., Washington, D.C. 20461, Phone (202) 653-4208.

Marilyn Ross, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: Puget Sound proposes to install two 81,000 KW natural gas/oil-fired combustion turbine units to be called Frederickson Unit Nos. 1 and 2 (Frederickson *1 and 2*) located in the Port of Tacoma's Frederickson Industrial Park in Pierce County, Washington. Each of the proposed units is expected to consume the energy equivalent of approximately 220,000 barrels of No. 2 fuel oil per year (600 bbl/day). Frederickson 1 and 2 are scheduled for commercial operation in November 1981.

FUA prohibits the use of natural gas or petroleum in certain new major fuel burning installations and powerplants unless an exemption for such use has been granted by ERA.

Puget Sound submitted a sworn statement with its petitions, signed by Mr. Robert V. Myers, Vice President, General Resources, as required by 10 CFR § 503.41(b)(1). In his statement, Mr. Myers certified that each of the units will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant. He also certified that the maximum design capacity of each unit is 81,000 KW; and that the maximum generation that the unit will be allowed

during any 12-month period is the design capacity times 1,500 hours or 121,500,000 Kwh.

Under the requirements of 10 CFR § 503.41(b)(1)(ii), if a petitioner proposes to use natural gas, or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, it must obtain an air quality certification from the Administrator of the Environmental Protection Agency or the Director of the appropriate state air pollution control agency. However since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplants, no such certification can be made. The certification requirement is therefore waived with respect to these petitions.

Tentative Staff Analysis

On the basis of Puget Sound's sworn statements and information provided, the staff recommends that ERA grant the requested peakload powerplant exemptions.

In recognition of the fact that the monthly maximum hourly load for Puget Sound in the winter is approximately twice the monthly maximum hourly load in summer, ERA staff identified peakload hours for Puget Sound as 7 a.m. to 10 p.m., Monday through Friday, November through March. However, in view of the nature of Puget Sound's hydroelectric resources, ERA staff now believes that the use of the units should not be confined to specifically designated hours. ERA staff believes that Puget Sound will be able to consume less oil and gas if it is permitted greater operating flexibility. The availability of hydroelectric resources is to some extent unpredictable. By permitting Puget Sound to delay the operation of gas or oil-fired peaking units during the peakload hours and draw down its hydroelectric resources during the designated hours, Puget Sound would be in a position to take advantage of additional rainfall which may occur, possibly eliminating the need to operate the combustion peaking units in the future. ERA staff considers such use of the units in that manner to be for the purpose of meeting peakload demand. Therefore, the terms and conditions do not specifically designate peakload hours.

In view of the importance of distillate fuel supplies to users of such fuel in the State of Washington, ERA staff recommends including a condition designed to minimize the potential market impact of any distillate fuel oil acquired by Puget Sound for use in Frederickson 1 and 2. This condition would be applicable only during periods when Puget Sound is faced with potential gas supply curtailments occurring concurrently with hydro conditions or other anticipated events that are expected to require the use of petroleum.

On August 11, 1980, DOE published in the Federal Register (45 FR 53199) a notice of proposed amendments to the guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the guidelines, the granting or denial of certain FUA permanent exemptions, including the permanent exemption by certification for a peakload powerplant, was identified as an action which normally does not require an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the granting or denial of the exemption will not significantly affect the quality of the human environment. Puget Sound has certified that it will secure all applicable permits and approvals prior to commencement of operation of each new unit under exemption. The Environmental Checklist completed and certified to by Puget Sound pursuant to 10 CFR § 503.15(b) has been reviewed by DOE's Office of Environment, with consultation from the office of the General Counsel, and it has been determined that Puget Sound's responses to the questions therein indicate that the operation of the peakload powerplants will have no impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirms the applicability of the categorical exclusion to this FUA action. ERA has not received pubic comments relating to this action which raises a substantial question regarding the categorical exclusion status in this case. Therefore, no additional environmental review is deemed to be required.

This Tentative Staff Anslysis does not constitute a decision by ERA to grant the requested exemptions. Such a decision will be made in accordance with 10 CFR § 501.68 on the basis of the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

Terms and Conditions

Section 214(a) of the Act gives ERA the authority to attach terms and conditions to any order granting an exemption. Based upon the information submitted by Puget Sound and upon the results of the staff analysis, the staff of ERA has tentatively determined and recommends that any order granting the requested peakload powerplant exemptions should, pursuant to section 214 of the Act, be subject to the following terms and conditions:

A. Puget Sound shall not produce more than 121,500,000 Kwh during any 12-month period with either of the proposed units, Frederickson No. 1 or 2.

B. Puget Sound shall comply with the reporting requirements set forth in 10 CFR § 503.41(d).

C. The quality of any petroleum to be burned in the units will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. Puget Sound shall maintain at least a 14-day inventory of oil for each unit whenever a condition of gas curtailment is anticipated together with hydro conditions or other anticipated events that are expected to require the use of petroleum. Puget Sound shall make all reasonable efforts to meet its anticipated needs for oil with minimal disruption to the needs of other users and to obtain any necessary inventories before a gas curtailment.

Issued in Washington, D.C. on January 17, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-2559 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 52970-9039-01, 02, 03, 04-82]

Tucson Electric Power Co.; Issuance of Proposed Prohibition Orders Pursuant to Sections 301 and 701 of the Powerplant and Industrial Fuel Use Act of 1978; Correction

This document corrects a notice of January 7, 1981 (46 FR 1769). Under the paragraph entitled *Proposed Prohibition Orders* appearing on page 1769, in column three, the table therein inadvertently omitted the megawatt capacity of Unit 4 and should read 156.

Under the paragraph entitled *Financial feasibility,* appearing on page 1770, in column one, the first sentence is corrected to read as follows: "ERA will presume that it is financially feasible for a unit to use a mixture of oil or natural gas and an alternate fuel as its primary energy source if the cost of using the mixture does not substantially exceed the cost of usingimported petroleum as calculated using the general cost

calculation described in 10 CFR § 504.12 (45 FR 84967, December 24, 1980)."

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

January 17, 1981.

[FR Doc. 81-2560 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER81-168-000]

Central Illinois Public Service Co.; Renotice of Filing

January 19, 1981.

The filing company submits the following:

Take notice that on December 12, 1980, Central Illinois Public Service Company tendered for filing the Seventh Supplemental Agreement dated December 1, 1980, to the Interconnection Agreement between Central Illinois Public Service Company and Kentucky Utilities Company dated January 31, 1967. The Commission has previously designated this agreement as CIPS Rate Schedule FERC No. 59 and KU Rate Schedule No. 81.

Copies of this filing have been sent to Kentucky Utilities Company, the Kentucky Energy Regulatory Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspecton.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2671 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-18-000]

Citizens Utilities Co.; Renotice of Application

January 19, 1981.

Take notice that on December 11, 1980, Citizens Utilities Company (Applicant) with its principal business office in Stamford, Connecticut, filed an application seeking an order pursuant to Section 204 of the Federal Power Act, authorizing the issuance of short-term promissory notes in an aggregate principal amount not to exceed $35,000,000 with a final maturity date not later than January 29, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2672 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP79-205]

Colorado Interstate Gas Co.; Renotice of Petition for Declaratory Order

January 19, 1981.

Take notice that on November 19, 1980, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-205 a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 7(c)) for a declaratory order removing uncertainty regarding Applicant's certificate authorization granted in the instant docket pursuant to Section 7(c) of the Natural Gas Act to utilize a natural gas delivery point to be located in Wheeler County, Texas (Amarex delivery point), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIG states that by order issued November 21, 1979, in the instant docket it was authorized to transport and exchange natural gas with the Natural Gas Pipeline Company of America (NGPL) on a systemwide basis. It is stated that the order imposed a condition precedent prohibiting the utilization of the Amarex delivery point until the Commission issues a final decision regarding the issues in Docket Nos. CP76-178 and RI76-50. CIG states that Amarex Inc. (Amarex), the operato of the Amarex delivery point, commenced the proceeding in Docket No. RI76-50 in order to set higher rates and to settle conflicting claims to the ga it produced. It is stated that after formal hearings and pending Commission action, Amarex filed a settlement proposal which resolved all issues in Docket No. RI76-50. However, CIG asserts, the Commission has never ruled on the settlement proposal and Amarex's motion to withdraw pleadings and notice of withdrawal of settlement proposal is still pending before the Commission. CIG states that it cannot ascertain whether approval of Amarex's withdrawal motion by the Commission would constitute a final decision under the condition precedent imposed in the November 21, 1979, order and thus allow CIG to utilize the Amarex delivery point in its authorized transportation and exchange of gas with NGPL.

Accordingly, CIG submits that in view of the foregoing discussion it would be beneficial and in the public interest for the Commission to issue a declaratory order stating that the Commission's approval of Amarex's motion satisfied the condition precedent mandated in the November 21, 1979, order and that upon approval CIG has authorization under the certificate issued in the instant docket to utilize the Amarex delivery point.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2673 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-191-001]

Columbia Gas Transmission Corp.; Renotice of Petition to Amend

January 19, 1981.

Take notice that on November 21, 1980, Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP80-191-001 a petition to amend the order issued April 18, 1980, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to correct the description of an authorized tap, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the April 18, 1980, order authorized the construction and operation of seventy interconnecting tap facilities including one point of delivery the request of which was incorrectly attributed to Columbia Gas of Pennsylvania, Inc. It is stated that the incorrect point of delivery was requested as Upshur County, Pennsylvania, for service to James Eckess, Route 3, Box 303, Buckhannon, West Virginia (Residential 150 Mcf).

Petitioner herein proposes a correction which would attribute the tap request to Columbia Gas of West Virginia, Inc. The corrected point of delivery would be Upshur County, West Virginia.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2676 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-71-000]

Columbia Gas Transmission Corp.; Renotice of Application

January 19, 1981.

Take notice that on November 26, 1980, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP81-71-000 an application pursuant to Section 7 of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon during the twelve-month period commencing March 1, 1981, and operation of various field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed facilities would not exceed $3,000,000. Applicant requests waiver of the single-project cost limitation of $500,000 prescribed by § 157.7(g) be increased to $750,000. Such a waiver is necessary, states Applicant, because of the increases in the cost of construction since 1973. Such costs, it is asserted, would be financed with funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the preceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2675 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-77-000]

Columbia Gulf Transmission Co., Renotice of Application

January 19, 1981.

Take notice that on December 1, 1980, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP81-77-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated August 13, 1980, Applicant states that it would transport up to 1,200 Mcf of natural gas per day on a best-efforts basis for Northern. Receipt of such gas would occur at an existing interconnection point between Applicant and Michigan Wisconsin Pipe Line Company located on the suction side of the Pecan Island liquid separation plant in Vermilion Parish, Louisiana, it is stated.

Said gas to be produced from South March Island Block 265, Offshore Louisiana, would be delivered to Northern, less adjustment for liquefiable hydrocarbon removal and fuel usages and losses, at an existing delivery point near Egan, Acadia Parish, Louisiana.

Applicant states that Northern would pay Applicant a rate of 5.82 cents per

Mcf of gas transported. Applicant further states that the agreement would remain in full force and effect for a primary term of 15 years commencing August 13, 1980, and would continue from year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearings.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2677 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-33]

Columbia LNG Corp., et al.; Renotice of Compliance Filing

January 19, 1981.

Take notice that on November 17, 1980, Columbia LNG Corporation (Applicant), 20 Montchanin Road, Wilmington, Delaware 19807, filed in Docket No. CP80-33 a compliance filing pursuant to the order issued April 11, 1980, in said docket pursuant to Section 7(c) of the Natural Gas Act authorizing interim operations of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on November 6, 1979, it filed a joint application with Consolidated System LNG Company for authorization to restore the Cove Point, Maryland, facility, which was destroyed in an explosion, to its initial design output. It is stated that the Commission authorized Applicant to construct but not to operate the facilities as proposed. It is further stated that on March 19, 1980, Applicant requested temporary authorization to conduct interim operations of the permanent facilities. On April 11, 1980, the Commission issued an order granting authorization for interim operations with three conditions, it is stated.

Applicant herein states that it has reconstructed said facilities following the October 6, 1979, explosion as originally designed except for the following modifications relating to safety:

(1) Improved pump seals installed on the ten high-stage sendout pumps.

(2) Air gaps installed in the conduit that runs between the high-stage pumps and the Substation No. 2.

(3) Programmable controllers used in place of relay cabinets to sequence and control the ten gas-fired vaporizes.

Furthermore, Applicant states that it has complied with the conditions contained in the April 11, 1980, order concerning facilities at the terminal that were not affected by the October 6, 1979, explosion. It is stated that the conditions involved: (1) improving the level of positive air pressure in the onshore and offshore electrical substations; (2) providing air gaps for each of the offshore booster pumps; and, (3) providing air gaps for all plant pumps, valve operators and instruments that could contain liquefied natural gas (LNG) or vapor that could be transmitted through the conduit system to an electrical substation or monitor house due to a component leak or failure.

Applicant states that it has implemented other safety measures and complied with recommendations issued by the U.S. Coast Guard, Materials Transportation Bureau and the National Transportation Safety Board. It is stated that the safety measures include (1) forty-seven additional combustible gas detectors; (2) an audible alarm and visual indication of the percent of the lower explosive limit have been installed on the exterior of 12 buildings in which the potential for gas accumulation exists; (3) a positive nitrogen gas purge at the electrical junction boxes installed on the ten onshore second stage sendout pumps; (4) an additional post indicator valve installed in the onshore firewater system; (5) a schematic of the firewater system has been installed in each building and at critical locations throughout the plant; (6) halon fire extinguishing systems have been installed; and, (7) a general plant alarm system has been installed.

Therefore, in the light of the above measures Applicant requests permenent authorization to operate the permanent facilities which were contructed and operated on an interim basis in compliance with the conditions included in Commission orders issued October 8, 1979, November 29, 1979, and April 11, 1980.

Any person desiring to be heard or to make any protest with reference to said filing should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Lois Cashell,

Acting Secretary.

[FR Doc. 81-2674 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-158-000]

Commonwealth Edison Co.; Renotice of Filing

January 19, 1981.

The filing Company submits the following:

Take notice that Commonwealth Edison Company on December 8, 1980 tendered for filing Amendment No. 2 to the Interconnection Agreement dated as of March 15, 1979 between Commonwealth Edison Company and Central Illinois Light Company.

Amendment No. 2 provides for the inclusion in Service Schedule D-Short Term Power of provisions for the implementation of daily short term power transactions between the Companies.

Copies of the filing were served upon Central Illinois Light Company, Peoria, Illinois, and the Illinois Commerce Commission, Springfield, Illinois.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2678 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-69-000]

Consolidated Gas Supply Corp.; Renotice of Application

January 19, 1981.

Take notice that on November 25, 1980, Consolidated Natural Gas Service Company, Inc. (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81-69-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Texas Eastern Transmission Corporation (TETCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to sell to TETCO up to 100,000 dekatherms (dt) equivalent of natural gas per day on an interruptible basis pursuant to the terms of a limited-term gas sales agreement dated November 20, 1980, for a period ending June 30, 1981.

It is stated that TETCO would utilize such gas for its general system supply and not for delivery to any particular customer.

TETCO would pay Applicant 285.89 cents per dt equivalent it is stated, in accordance with Applicant's Rate Schedule E to its FERC Gas Tariff, Third Revised Vol. No. 1.

It is asserted that the subject gas would be delivered from Applicant's system supply by displacement at any or all of the existing delivery points at which TETCO sells gas to Applicant.

It is further asserted that TETCO requires express authorization in the requested order to include all purchased gas costs in its semiannual PGA filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2679 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-289-022]

El Paso Natural Gas Co.; Renotice of Amendment

January 19, 1981.

Take notice that on November 13, 1980, El Paso Natural Gas Company (Petitioner), P.O. Box 1495, El Paso, Texas 79978, filed in Docket No. CP77-289-022 an amendment to its pending application filed in said docket issued pursuant to Section 7(c) of the Natural Gas Act so as to reflect the utilization of the Clay Basin Interim Storage Arrangements (Clay Basin Arrangements) for the pay-back of volumes of natural gas anticipated to be made available for protecting service to the peak-day Priority 1 and 2 requirements of Petitioner's east-of-California (EOC) customers during the 1980-81 winter season, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

Petitioner submits that it has recently entered into a delayed exchange arrangement with Houston Pipe Line Company (HPL) that is designed to assist it in protecting its EOC customers' peak-day Priority 1 and 2 requirements during the 1980-81 winter season and that generally this arrangement would permit HPL to withdraw natural gas for Petitioner from its Bammel Storage Field in Harris County, Texas. Petitioner further submits that HPL would transport and cause such natural gas to be delivered to Petitioner at Petitioner's Waha Plant in Pecos County, Texas. During the 1980-81 winter season, HPL would provide such quantities of natural gas up to 200,000 Mcf per day as may be required for use by Petitioner in protecting EOC Priority 1 and 2 service, it is stated. It is asserted that such withdrawal transportation and delivery of natural gas would be required only on those peak days during the 1980-81 winter season when the quantities of natural gas otherwise available for service to Petitioner's EOC customers as augmented by the maximum volumes available through the Clay Basin Arrangements are not alone sufficient to fully provide service to the EOC customers' Priority 1 and 2 requirements.

In exchange for those services to be provided by HPL, Petitioner states that it has agreed to deliver or pay back to HPL at a later date a volume of natural gas equivalent to the volumes provided earlier by HPL to Petitioner and that such payback would be accomplished as soon as operationally possible and at a maximum rate of 50,000 Mcf per day but in any event prior to October 1, 1981. This payback of natural gas would be accomplished through the delivery to HPL of volumes of natural gas available from the Clay Basin Arrangements.

Furthermore, Petitioner states that it is contemplating entering into arrangements with its California customers and obtaining authorization for the diversion of otherwise scheduled deliveries of natural gas (California back-off arrangements) during the 1980-81 winter season also for the purpose of

protecting its EOC customers' Priority 1 and 2 service requirements and that it would propose to utilize the Clay Basin Arrangements for the in-kind restoration of such diverted volumes of natural gas. Such restoration arrangement, Petitioner asserts, would allow it additional flexibility in protecting service to Petitioner's EOC Priority 1 and 2 customers if the California back-off arrangements are required during the 1980–81 winter season.

Under present authorization for the Clay Basin Arrangements, Petitioner states that it delivers for the account of Clay Basin Storage Company (Storage Company) and that Storage Company sells volumes of natural gas withdrawn from the Clay Basin Field to the three largest EOC distributor customers of Petitioner; namely, Arizona Public Service Company, Southern Union Company and Southwest Gas Corporation. Contemporaneously, Petitioner reduces otherwise scheduled deliveries of natural gas sold by it to the three largest EOC distributor customers and increases its otherwise scheduled deliveries of natural gas sold by Petitioner to all other EOC customers having Priority 1 and 2 requirements thereby permitting the beneficial use of the Clay Basin storage withdrawals directly or by displacement for all EOC customers with Priority 1 and 2 requirements, it is said.

In order to use Clay Basin withdrawal volumes for payback, Petitioner proposes herein that its existing authorization in connection with the Clay Basin Arrangements be amended as required to permit it to reduce its otherwise scheduled deliveries of natural gas sold by it to its three largest EOC distributor customers in off-peak periods during the 1980–81 winter season. Petitioner asserts that it desires such authorization in order that the natural gas so divereted from these distributor customers may be delivered instead to HPL and if necessary to Petitioner's California customers as payback gas. Petitioner further asserts that the three distributor customers would under the instant proposal receive the same volume of natural gas in the same manner as under the presently authorized Clay Basin Arrangements through reductions in the amount of natural gas delivered and sold by Petitioner and the contemporaneous delivery by Petitioner and sale by Storage Company to those same customers of equivalent volumes of Storage Company's gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before Janaury 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2652 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-167-000]

Florida Power & Light Co.; Renotice of Filing

January 19, 1981.

The filing company submits the following:

Take notice that Florida Power & Light Company (FPL) on December 12, 1980 tendered for filing a document entitled "Service Agreement For Interchange Transmission Service Implementing Specific Transactions Under Service Schedules A (Emergency Service), B (Short Term Firm Service), C (Economy Interchange Service) and D (Firm Service) of Contracts for Interchange Service," and Exhibits I.

FPL states that under Service Agreement and Exhibits, FPL will transmit power and energy for the Sebring Utilities Commission (Sebring) as is required by Sebring in the implementation of its interchange agreements with the Utilities Commission, City of New Smyrna Beach, the City of Vero Beach, the Fort Pierce Utilities Authority and the City of Homestead.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Service Agreement and Exhibits be made effective immediately. FPL states that copies of the filing were served on the Chairman of Sebring.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2653 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-174-000]

Florida Power & Light Co.; Renotice of Filing

January 19, 1981

The filing company submits the following:

Take notice that Florida Power & Light Company (FPL) on December 11, 1980 tendered for filing a document entitled "Exhibit I to Service Agreement for Interchange Transmission Service Implementing Specific Transactions Under Service Schedules A (Emergency Service), B (Short Term Firm Service), C (Economy Interchange Service) and D (Firm Service) of Contracts for Interchange Service."

FPL states that under the Exhibit, FPL will transmit power and energy for the Lake Worth Utilities Authority (Lake Worth) as is required by Lake Worth in the implementation of its interchange agreement with the City of Kissimmee.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Exhibit be made effective immediately. FPL states that copies of the filing were served on the Superintendent of System Operations of Lake Worth.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2654 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-108]

Gas Research Institute; Renotice of Request for Reprogramming

January 19, 1981

Take notice that on November 21, 1980, Gas Research Institute (GRI), 1019 19th Street, N.W., Suite 910, Washington, D.C. 20036, filed pursuant to the provisions of Stipulation 6 of the September 30, 1977, Stipulation and Agreement approved in Opinion No. 11, as amended by Ordering Paragraph (D) of Opinion No. 96, issued in Docket No. RP80-108 on September 30, 1980, requesting authority to reprogram some of the 1980 Research & Development (R&D) Program funds approved in Opinion No. 64.

The stated purpose of this reprogramming request is to allow these funds to be used in conjunction with four (4) specific projects. Such projects, asserts GRI, now constitute the best use of the $4,624,137 of 1980 R&D Program funds proposed to be expended on them.

Moreover, GRI states that the proposed reprogramming of 1980 R&D Programs funds blends well with the 1981 GRI R&D Program approved by the Commission in Opinion No. 96 and assures that GRI's continuing effort remains abreast of the state-of-the-art in energy technology.

Any person desiring to be heard or to protest said request should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a part must file a petition to intervene. Copies of this request are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2655 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Holyoke Water Power Co.; Renotice of Filing

January 19, 1981.

The filing company submits the following:

Take notice that Holyoke Water Power Company ("the Company"), on December 12, 1980, tendered for filing a rate schedule entitled "Oil Conservation Adjustment Agreement". The Company proposes that the rate schedule become effective on January 15, 1981, and that billings pursuant thereto commence on the date upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The parties to the Oil Conservation Adjustment Agreement are the Company, The Connecticut Light and Power Company, The Hartford Electric Light Company, Western Massachusetts Electric Company and Holyoke Power and Electric Company. Each party is an operating subsidiary of Northeast Utilities and are collectively called "Northeast Utilities Companies".

The Company states that the Northeast Utilities Companies propose to establish a mechanism for implementation of a temporary oil conservation adjustment ("Oil Conservation Adjustment" or "OCA") in order to make it possible for HWP to convert its Mt. Tom electric generating plant to the use of coal, rather than oil, as its primary fuel source. The conversion will fulfill the national energy conservation objective of reducing oil consumption and will serve to reduce the costs of each of the Northeast Utilities Companies by substituting relatively low-cost coal for higher-cost oil. The Company states that the proposed rate schedule is intended to provide for collection of the OCA and thereby spread the costs of the Mt. Tom conversion among the Northeast Utilities Companies in proportion to the respective benefits received by each of the Northeast Utilities Companies from the Mt. Tom plant.

The company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the proposed date for commencement of charges under the filed rate schedule and fewer than sixty days prior to the proposed effective date of January 15, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2656 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-17-000]

Idaho Power Co.; Renotice of Application

January 19, 1981.

Take notice that on December 4, 1980, Idaho Power Company (Applicant) filed a request seeking authority, pursuant to Section 204 of the Federal Power Act, to negotiate the placement of up to $50,000,000 of Preferred Stock.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2657 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-160]

Indiana & Michigan Electric Co.; Renotice of Filing

January 19, 1981.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on December 9, 1980, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&M), Modification No. 13 dated December 1, 1980 to the Interconnection Agreement dated June 1, 1968 between Central Illinois Public Service Company and Indiana & Michigan Electric Company, I&M's Rate Schedule FERC No. 67.

Sections 1 and 2 of Modification No. 13 provide for an increase in the demand charge for Short Term and Limited Term Power from $0.85 to $1.05 per kilowatt per week and $4.50 to $5.50 per kilowatt per month respectively. Both schedules are proposed to become effective February 15, 1981.

Applicant states that since the use of Short Term Power cannot be accurately estimated, for the twelve-month period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from this modification for such period. There were no Short Term nor Limited Term transactions in the year ending August 31, 1980.

Copies of the filing were served upon Central Illinois Public Service Company, the Public Service Commission of Indiana and the Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2659 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-161-000]

Indiana & Michigan Electric Co.; Renotice of Filing

January 19, 1981.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on December 9, 1980, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&M), Modification No. 16 dated November 26, 1980 to the Interconnection Agreement dated November 27, 1961 between Illinois Power Company and Indiana & Michigan Electric Company, I&M's Rate Schedule FERC No. 23.

Sections 1 and 2 of Modification No. 16 provides for an increase in the demand charge for Short Term and Limited Term Power from $0.85 to $1.15 per kilowatt per week and $4.50 to $5.50 per kilowatt per month respectively. Both schedules proposed to become effective February 15, 1981.

Applicant states that since the use of Short Term Power cannot be accurately estimated, for the twelve months period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from this modification for such period. There were no Short Term or Limited Term transactions in the year ending August 31, 1980.

Copies of the filing were served upon Illinois Power Company the Public Service Commission of Indiana and the Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2660 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-164-000]

Iowa-Illinois Gas and Electric Co.; Renotice of Filing

January 19, 1981.

The filing Company submits the following:

Take notice that Iowa-Illinois Gas and Electric Company (Applicant), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, on December 11, 1980, tendered for filing pursuant to revised Section 35.13 of the Regulations under the Federal Power Act proposed change in its Rate Schedule WES-M (applicable only to the cities of Buffalo, Callender, and Farnhamville, Iowa), FPC Wholesale Electric Tariff, Original Volume No. 1. The change, reflected in 2nd Revised Sheet No. 8, proposed to be effective February 15, 1981, would increase revenues from jurisdictional sales and service by $68,025 based on the 12-month period ending May 31, 1980.

Applicant alleges that the reason for the proposed increased revenues is because its operating income has declined to a level which provides an inadequate return. It further alleges tha it is essential in the interest of preserving its financial integrity that its revenues and operating income be restored to a level to adequately meet the operating expenses necessary to provide good electric service and to attract the additional capital needed.

Copies of the filing were served upon the cities of Buffalo, Callender, and Farnhamville, Iowa, and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to b taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for publi inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2639 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-159-000]

Kansas Gas and Electric Co.; Renotice of Proposed Tariff Change

January 19, 1981

The filing Company submits the following:

Take notice that Kansas Gas and Electric Company on December 9, 1980, tendered for filing proposed changes in its FPC Electric Service Tariff Nos. 124, 117 and 120. The proposed Amendatory Agreements change the minimum and maximum amounts of power.

The Amendatory Agreements are necessary because the present demands are being exceeded.

Copies of this filing were served upon the Cities of Arcadia, Kansas, Blue Mound, Kansas and Bronson, Kansas.

Any person desiring to be heard or to protest said Application should file a

petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Para. 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2840 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-4-002]

Michigan Wisconsin Pipe Line Co.; Renotice of Proposed Changes in F.E.R.C. Gas Tariff

January 19, 1981

Take notice that on December 5, 1980, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), tendered for filing Substitute Tenth Revised Sheet No. 7 to its F.E.R.C. Gas Tariff, Original Volume No. 1, and proposed an effective date of January 1, 1981 for said sheet.

The tariff sheet replaces Tenth Revised Sheet No. 7 which was filed to reflect an increase in the GRI Adjustment in accordance with Commission Order No. 96. The substitute tariff sheet is necessary to reflect revised Base Tariff Rates at Docket No. RP80-100 which have been filed concurrently with this filing.

Michigan Wisconsin further states that it requests a waiver of the requirements of Part 154 of the Commission's Regulations under the Natural Gas Act to the extent that such waiver may be necessary to permit this filing of Substitute Tenth Revised Sheet No. 7 to be made and to become effective January 1, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules and Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2858 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-150-000]

Missouri Public Service Co.; Renotice of Filing

January 19, 1981.

Take notice that on December 2, 1980, Missouri Public Service Company (Missouri) tendered for filing a contract for electric service between Missouri and the City of El Darado Springs, Missouri.

Missouri states that its tariff now includes the current contract which serves as a rate scheduled applicable to El Darado Springs, and that this new contract reflects an extension of the term of the contract to April 31, 1991. Missouri further states that the expiration date of the current contract is October 1, 1986.

Missouri indicates that aside from the change of the expiration date to April 31, 1991, there are no substantive changes from the existing contract.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2841 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-70-000]

Mountain Fuel Supply Co.; Renotice of Application

January 19, 1981

Take notice that on November 25, 1980, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP81-70-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization with respect to its Uintah Basin pipeline to transport, sell and assign natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations, as well as Section 284.203 thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that 29,234,042 Mcf of natural gas from all sources including 1,456,952 Mcf from interstate pipeline companies were recevied by Applicant during the 12-month period ending September 30, 1980, within or at the state boundary. It is also stated that during the same period 4,995,076 Mcf of gas was exempted from the Commission's jurisdiction under the Natural Gas Act by reason of Applicant's exemption pursuant to Section 1(c). The 4,995,076 Mcf of gas were received by Applicant's Uintah Basin system in Utah from Mountain Fuel Resources at Bonanza, Utah, during the most recent 12-month period ending September 30, 1980, it is stated.

Applicant states that with respect to its Uintah Basin pipeline it was issued a declaration of exemption by the Commission under Section 1(c) of the Natural Gas Act in Docket No. CP64-221.

Applicant asserts that it would comply with the conditions set forth in Section 284.222(e) of the Commission's Regulations. It is further stated that Applicant would base its rates upon the methodology approved by the Commission for transportation service rendered by the Uintah Basin pipeline in Docket No. CP79-288.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in

any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Louis D. Cashell,

Acting Secretary.

[FR Doc. 81-2642 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-76-000]

Mountain Fuel Supply Co.; Renotice of Application

January 19, 1981

Take notice that on December 1, 1980, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah, 84139, filed in Docket No. CP81-76-000, pursuant to Section 7(c) of the Natural Gas Act for an application certificate of public convenience and necessity authorizing the construction and operation of a main line distribution gas sales pressure tap, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Sunrise Construction Company (Sunrise) has requested natural gas service in the amount of 80 Mcf per hr., during the summer months, to facilitate the operation of an asphalt batch plant. The plant is located near the Foothill Subdivision in Sweetwater County, approximately 5 miles west of Rock Springs, Wyoming. In addition, Applicant estimates that within three years, forty residential gas customers would be residing at a mobile home park that is currently being developed in the Foothill Subdivision.

Applicant states that it has supplies of natural gas in excess of its system requirements that it is willing to make available to Sunrise and potential residential customers under the provisions of its Wyoming tariff and pursuant to the authority granted Applicant by the Public Service Commission of Wyoming. Sunrise would be served as an interruptible customer under Applicant's Wyoming I-2 Rate Schedule and therefore, would not impact the peak-day demand requirements of Applicant's distribution system firm customers. Residential customers would be served on a firm basis under Applicant's Wyoming General Service (GS-I) Rate Schedule.

In consideration of the above, Applicant has requests authorization to construct and operate a main line sales tap and appurtenances to effectuate the proposed delivery of gas to potential distribution customers. Average annual sales during the first three years of service are expected to be approximately 80,000 Mcf. The total estimated cost for the proposed Main Line Tap is $23,989 which cost would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2643 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-65-000]

Natural Gas Pipeline Company of America; Renotice of Application

January 19, 1981.

Take notice that on November 20, 1980, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81-65-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to increase its maximum inventory limits at certain of its existing market storage fields by approximately 45,000,000 Mcf of gas over the next four years, and to operate such market storage facilities so as to withdraw from time to time all or any part of such 45,000,000 Mcf with these withdrawals to be in addition to the present 49,700,000 Mcf authorized withdrawal limit, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is presently authorized to withdraw up to a maximum of 49,700,000 Mcf of gas for its own account from its market storage fields to help support its winter deliveries which is in addition to certificated withdrawals to provide Rate Schedules S-1 and LS-1, LS-2 and LS-3 services, which are customer services provided from the same market storage reservoirs.

Applicant further states that as a result of a number of factors, it is in a situation in which gas deliverable from its sources of supply is in excess of its current requirements. Applicant submits that this situation of excess deliverability is due in part to high take obligations in contracts which it entered into during the gas shortage to minimize curtailment and that these contracts generally include provisions which provide for take obligations based on a fixed, high percentage of a well's ability to deliver gas. Applicant further submits that it must continue to seek long-term supplies of gas to meet its customers' future needs and that current high take requirements associated with these new

supply acquisitions have appreciated its excess deliverability due to producers' tendering significantly more gas to Applicant.

Concomitantly, Applicant states that it has also experienced a significant reduction in the demand for gas.

Accordingly, Applicant proposes herein to expand use of its market storage to husband part of its excess deliverability gas. Applicant's reservoir engineering studies indicate that the five proposed reservoirs listed below would be able to accept a 45,000,000 Mcf increase in maximum inventory over the next four-year period without entailing the construction of new facilities.

Applicant asserts that expanded use of market storage would provide it with significant benefits in addition to husbanding the excess deliverability gas which benefits include greater operating flexibility, full implementation of supply management policies and maximum utilization of facilities. Applicant further asserts that in the event it temporarily loses volumes because of problems on the main line system it could replenish those volumes over the heating season from market storage but that because its present field storage at North Lansing and Sayre are at the south end of its system, the gas must travel through the pipeline to Applicant's market and is subject to pipeline capacity constraints. Inasmuch as market storage is proximate to Applicant's market, it avoids these mainline and supply disruption problems, Applicant asserts.

Accordingly, Applicant requests authorization to increase the maximum inventory levels as shown:

	Maximum inventory (14.73 psia)	
	Present	Proposed
Loudon	72,393,000	75,000,000
Cairo Mt. Simon	50,776,000	62,100,000
Cairo Galesville	15,032,000	24,700,000
Columbus City Mt. Simon	35,191,000	49,400,000
Columbus City St. Peter	9,049,000	16,300,000
Total	182,491,000	227,500,000

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29,1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2644 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-73-000]

Natural Gas Pipeline Company of America and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Renotice of Application

January 19, 1981

Take notice that on November 26, 1980, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-73-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes individually to construct and operate 1.4 miles of 6-inch pipeline which would originate at the production platform of Samedan Oil Corporation (Samedan) located in Brazos Block A-28, offshore Texas, and would extend in a northeasterly direction to the Tenneco Oil Company's (Tenneco) production platform in the Brazos Block A-17. It is stated that Tennessee would own 100 percent of the pipeline and that the line would permit gas to be produced from Brazos A-28 and sold by Samedan and Tenneco to Tennessee to be attached to Tennessee's system gas supply. Applicants estimate that 15,388,000 Mcf of recoverable gas reserves would be acquired by Tennessee from the field.

Applicants propose jointly to construct and operate 13.5 miles of 12-inch diameter pipeline which would originate at an interconnection with Tennessee's proposed 6-inch diameter line at the Tenneco production platform and which would extend in a northwesterly direction to an interconnection with the existing 30-inch pipeline facility owned by Transcontinental Gas Pipe Line Corporation in the Brazos A-538 Block. It is asserted that the 12-inch pipeline along with dehydration facilities and platform space would be jointly owned by Natural and Tennessee. Applicants state that Tennessee would own 75.25 percent and Natural 24.75 percent and that operation and maintenance costs would be shared by these same respective percentages. It is stated that participation in the jointly owned facilities was determined according to the volume of reserves available to each pipeline through construction of the facilities proposed herein.

Applicants state that Tennessee has also entered into gas purchase agreements with Samedan and Tenneco and has acquired an estimated 24,151,000 Mcf of recoverable gas reserves from the Brazos A-17 field. It is further stated that Natural has entered into an agreement with Chevron U.S.A., Inc. and has committed to it an estimated 13,003,000 Mcf of recoverable gas reserves from the Brazos A-17 field.

Applicants estimated that as a result of the construction of the proposed facilities a total of 52,542,000 Mcf of recoverable gas reserves would be available to Tennessee and Natural from the Brazos A-17 and Brazos A-28 fields and that total initial deliverability from these reserves would be approximately 45,000 Mcf of gas per day.

Applicants estimate the cost of the 6-inch diameter pipeline to be $2,067,000 and of the 12-inch diameter pipeline and related facilities to be $9,283,000 which costs would be financed initially by funds on hand, borrowings under revloving credit arrangements, or short-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before January

29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2645 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-79-000]

Natural Gas Pipeline Company of America, Columbia Gulf Transmission Company, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Renotice of Application

January 19, 1981.

Take notice that on December 3, 1980, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-79-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of joint offshore gas pipeline facilities in the West Delta Area, offshore Louisiana, and the transportation of natural gas for Gulf Oil Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they or their affiliates and Transcontinental Gas Pipe Line Corporation (Transco) have the right to purchase natural gas reserves located in the offshore Louisiana West Delta Block 109 Area and that in order to provide for the receipt of this additional supply of natural gas, Applicants have agreed to construct and jointly own approximately 5.36 miles of 12¾ inch pipeline extending from a production platform in West Delta Block 109 to a subsea tap on the proposed Tennessee/Columbia Gulf pipeline in South Pass Block 77 (Project SP 77 facilities). Applicants further state that such facilities would provide a daily capacity of 72,681 Mcf.

Applicants submit that the proposed facilities are designed to enable them to attach and made available to their respective onshore pipeline systems and to Transco the gas reserves from West Delta Block 109 area. The gas reserves which Transco and Applicants have committed are stated to be as follows:

[In percent]

	Texaco, Inc.	Chevron U.S.A., Inc.	Mobil Oil Corp.
Natural	75		
Columbia Gas		3.124	2.78
Tennessee		3.124	2.78
Transco			2.77

Applicants further submit that there is presently uncommitted 2.09 percent of the total gas reserves attributable to West Delta 109 area which Applicants expect to be committed by the time the facilities are placed in service.

Applicants assert that the proposed facilities would be utilized on the basis of each Applicant's ownership percentage. Specifically, it is stated that ownership percentages would be based upon the following:

Ownership (in percent)

Natural	81.82
Columbia Gulf	7.58
Tennessee	10.60

Applicants further submit that they have agreed that an amount equal to 8.33 percent of the total cost of such facilities would be provided by Gulf and for such amount, Gulf would be entitled to deliver into and have transported through the propcsed facilities up to a maximum of 6,054 Mcf of gas per day. Accordingly Applicants further propose herein to provide such transportation service for Gulf.

It is asserted that the proposed transportation service would enable Gulf to obtain receipt of its own production from West Delta Block 109 for ultimate delivery to Texas Eastern Transmission Corporation.

Applicants estimate that the total cost of the proposed facilities would be $4,820,000. Applicants state that their respective shares of said costs would be financed initially through revolving credit arrangement, short-term loans and from funds on hand. Permanent financing would be undertaken as part of Applicants' respective long-term financing programs at later dates.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulation Commission, Washingon, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2648 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-88-002]

Northern Natural Gas Co.; Renotice of Filing of Revised Substitute Tariff Sheets

January 19, 1981.

Take notice that on October 24, 1980, Northern filed a Motion To Have Suspended Tariff Sheets Go Into Effect in the above docket in accordance with Section 4(e) of the Natural Gas Act. At the same time certain Substitute Tariff Sheets were filed in compliance with the suspension order.

Since then, Northern, its customers, intervenors and FERC Staff have continued to hold settlement conferences. On December 5, 1980, a settlement of all issues was agreed to by all parties. As a part of the agreement, Northern agreed that it would reduce the rates put into effect pursuant to the above filed Motion to the level designed to recover the settlement cost of service. The settlement rates reflect an annual increase of $96,006,000 in jurisdictional market area revenues and $344,000 in jurisdictional field sales revenues, based upon sales volumes for the 12-month period ended December 31, 1979, as adjusted. Such settlement rates are proposed to become effective in lieu of the rates (tariff sheets) previously accepted for filing by the Commission, effective October 27, 1980, which would have resulted in annual jurisdictional revenue increases of $150,100,000 and $661,000, respectively. Northern is therefore submitting for filing the following tariff sheets:

Third Revised Volume No. 1

Second Substitute Twenty-Third Revised Sheet No. 4a
Second Substitute Thirteenth Revised Sheet No. 4b

Original Volume No. 2

Second Substitute Twenty-Third Revised Sheet No. 1c

Northern proposes that the above tariff sheets be accepted for filing to be effective October 27, 1980, as Northern proposes to bill its jurisdictional customers at the rates set forth on the above listed tariff sheets for the billing month of November, 1980 and thereafter. Northern respectfully requests the Commission to waive its regulations to allow the proposed effective date. Acceptance of these tariff sheets will enable Northern to avoid billing its utility customers at a rate level higher than the agreed to settlement rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Jan. 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2647 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-169-000]

Pacific Gas & Electric Co.; Renotice of Contract Filing

January 19, 1981.

The filing company submits the following:

Take notice that on December 12, 1980, Pacific Gas and Electric Company (PGandE) rendered for filing a contract dated August 26, 1980, entitled "Energy Transfer and Recall Agreement" (Agreement) between Martin Marietta Aluminum, Inc. (MMA) and PGandE. The Agreement provides for the sale to PGandE of a portion or all of 29,250,000 kWh of energy which MMA is entitled to purchase from Cominco, Ltd. of Canada (Cominco) during the month of September 1980 and return to the energy to MMA. If requested prior to September 30, 1981. In September 1980, MMA delivered 29,250,000 kWh to PGandE reassigned it to the Bonneville Power Administration (BPA) of the United States Department of Energy to repay energy owed. The energy rate for the sale or recall of this energy is $0.0358/kWh, which is MMA's cost for Cominco energy.

PGandE has requested waiver of the notice requirements pursuant to § 35.11 of the Commission's regulations to permit an effective date of September 1, 1980.

Copies of this filing were served upon MMA, BPA, and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20226, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2661 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-163-000]

Public Service Co. of Colorado; Renotice of Filing

January 19, 1981.

The filing Company submits the following:

Take notice that Public Service Company of Colorado (PSCo) on December 10, 1980, tendered for filing six Western Systems Coordinating Council (WSCC) Economy Energy "Broker" Letter Agreements (Agreements) made bilaterally between PSCO and Black Hills Power and Light Company, The City of Colorado Springs, Arizona Electric Power Cooperative, Inc., and the Department of Water and Power of the City of Los Angeles.

PSCo states that the Agreements provide, *inter alia*, for sales of Broker Eonomy Energy between the electric systems of PSCo and each of the above listed utilities either directly or through the systems of other parties. The Agreements provide for establishing terms and conditions of such Broker arranged Economy Energy sales.

PSCo states that copies of the filing were served upon all parties and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2662 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-170-000]

Southern California Edison Co.; Renotice of Filing

January 19, 1981.

The filing Company submits the following:

Take notice the December 12, 1980, Southern California Edison Company ("Edison") tendered for filing two letters dated August 26, 1980 and September 11, 1980, which provided for payment by Portland General Electric Company for transmission service provided by Edison during the fourth quarter of 1979.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Portland General Electric Company.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 29, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2663 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-63-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Texas Eastern Transmission Corp.; Renotice of Application

January 19, 1981.

Take notice that on November 20, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77002, filed in Docket No. CP81-63-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation on certain offshore facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants propose to construct and operate facilities which in part would be jointly owned and in part separately owned by Applicants. It is stated that the proposed facilities would extend from Blocks A-270 and A-264 in the High Island, offshore Louisiana, area to Block 227 in the East Cameron, offshore Louisiana, area (EC 227) and thence onshore where such facilities would tie-in to Applicants' existing onshore facilities. Applicants further state that this network, to be known as the High Island-Cameron System (HI-Cam Project), would be utilized to (1) provide needed additional offshore capability to enable Applicants to obtain gas reserves already available and to acquire additional new reserves which would become available in the High Island and Cameron offshore areas and (2) accomplish an offshore tie-in of the High Island Offshore System (HIOS) directly to Applicants' existing facilities.

Applicants state that the HI-Cam Project would consist of a 30-inch pipeline extending 21.6 miles from High Island Block A-270 and High Island Block A-264 to Tennessee's West Cameron 498 facilities which consist of 30.6 miles of 30-inch pipeline which ties to Texas Eastern's Cameron System in East Cameron Block 227. Further, at the East Cameron Block 227 tie-in, a platform, meter and a 2,200 horsepower compressor would be installed, it is asserted. From that point, Applicants further state that a 36-inch pipeline would be installed which would generally parallel Texas Eastern's offshore Cameron system for 82.0 miles to a point onshore near Grand Chenier, Louisiana, and that this line would continue northeasterly for 35.0 miles to a point near Woodlawn, Louisiana, where the jointly owned facilities terminate. From Woodlawn, Tennessee states it would install and own a 30-inch pipeline which would extend for 12.5 miles to its existing pipeline system near Kinder, Louisiana. Texas Eastern, it is stated, would likewise install and own a 30-inch pipeline which would extend 3.7 miles westerly from Woodlawn to Iowa and then northwesterly for 15.3 miles to its existing pipeline system near Gillis, Louisiana.

Applicants submit that of the total estimated direct cost of $240,021,000 Tennessee would contribute $147,947,000 and Texas Eastern would contribute the remaining amount expected to be $92,074,000. The estimated cost, it is submitted, would be initially financed with funds on hand and/or borrowing under revolving credit agreements which may later be replaced with long-term financing.

Applicants further submit that pursuant to an agreement between them dated November 12, 1980, they would have capacity entitlements and share the total capacity available in specific sections of the proposed HI-Cam Project as set out below:

CAPACITY ENTITLEMENT

[In percent]

Description	Texas Eastern	Tennessee
I. High Island 270 to West Cameron 498	19.6	80.4
II. West Cameron 498 to East Cameron 227	15.2	84.8
III. East Cameron 227 to Grand Chenier	35.7	64.3
IV. Grand Chenier to Woodlawn	35.7	64.3
V. Woodlawn to Gillis	100.0	0
VI. Woodlawn to Kinder	0	100.0

It is asserted that each party would own interests in the HI-Cam Project as follows:

(a) Section I facilities would be owned approximately 34.3 percent by Texas Eastern and 65.7 percent by Tennessee.

(b) The Section II segment would be owned 100 percent by Tennessee.

(c) The platform in the Section III segment which is located at East Cameron 227 would be owned 50 percent by each party.

(d) The compression facilities in the Section III segment, consisting of 2,200 horsepower and related dehydration and separation facilities, would be owned 100 percent by Tennessee.

(e) Section V facilities would be owned 100 percent by Texas Eastern.

(f) Section VI facilities would be owned 100 percent by Tennessee.

(g) All remaining facilities would be owned 64.3 percent by Tennessee and 35.7 percent by Texas Eastern.

It is further submitted that installation of the proposed facilities would provide Tennessee and Texas Eastern with direct access to gas supplies in the High Island and West Cameron offshore areas and greater access in the East Cameron offshore area and that Applicants are currently negotiating for

new supplies of gas in the area proximate to the proposed facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herin provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2684 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-421-019]

Transcontinental Gas Pipe Line Corp.; Renotice of Petition to Amend

January 19, 1981.

Take notice that on November 25, 1980, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-421-019 a petition to amend the order issued March 22, 1979, as amended August 28, 1979, and August 8, 1980, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize a long-term extension of natural gas transportation service provided for certain of its customers, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it was authorized to transport up to 18,000 dekatherms equivalent of natural gas per day on an interruptible basis for the account of eleven of its distribution company customers, its one direct industrial customer and two industrial customers of its distribution customers. It is stated that these customers have participated in three exploration and development programs engaged in the search for and development of new natural gas reserves in onshore areas or in state waters in the Gulf Coast region and as a result have earned the rights to gas production from successful wells discovered by the three drilling programs. Petitioner states that such production is the subject of the transportation service which by order issued August 28, 1979, was extended until August 23, 1981, and which by order issued August 8, 1980, now includes transportation of gas for South Jersey Gas Company on an interruptible basis from two existing fields and from future fields.

Petitioner proposes to extend its transportation service for industrial customers beyond the current two-year limitation previously imposed by the Commission so as to be consistent with the term provided for in Petitioner's Rate Schedule T service agreements between Petitioner and each of the direct and indirect industrial customers. Petitioner states that the Commission in its order issued March 24, 1980, in *Natural Gas Pipeline Company of America, et al.*, Docket Nos. CP77-71, *et al.* limited its decision to gas purchased in place by an industry. It is asserted that the Commission did not decide any policy issues concerning long-term transportation of gas owned by industries as a result of their own exploration and development efforts which is the type of gas transported by Petitioner in the instant docket.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 29, 1981, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2685 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-83-000]

Transcontinental Gas Pipe Line Corp.; Renotice of Application

January 19, 1981.

Take notice that on December 4, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP81-83-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessite authorizing the transportation of natural gas for the account of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Applicant proposes to receive for Southern up to 6,000 Mcf of natural gas per day at an interconnection between the facilities originating in Ship Shoal Block 84 jointly owned by Northern Natural Gas Company, Division of InterNorth, Inc., United Gas Pipe Line Company and Southern and Applicant's Southeast Louisiana gathering system in Ship Shoal Blocks 70 and 72, offshore Louisiana. Applicant would redeliver thermally equivalent quantities, less quantities retained for compressor fuel and line loss, to Florida Gas Transmission Company (Florida) for the account of Southern at the existing interconnections between the systems of Florida and Applicant in Vermilion Parish, Louisiana, or St. Helena Parish, Louisiana.

It is stated that Southern would pay a monthly demand charge of $18,720 and that Applicant would retain 1.2 percent of the quantities transported as compressor fuel and line loss make-up.

The proposed service, it is stated, is for a primary term of ten years from the date of initial delivery and from year to year thereafter. Applicant asserts that the subject gas would help Southern to maintain as adequate and reliable service as possible to its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January

29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to be come a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2867 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-75-000]

Transcontinental Gas Pipe Line Corp.; Northern Natural Gas Co., Division of InterNorth, Inc.; Renotice of Application

January 19, 1981

Take notice that on November 26, 1980, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77001, and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102 (Applicants), filed in Docket No. CP81-75-000, an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to exchange a Maximum Daily Quantity of 50,000 Mcf of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that pursuant to an exchange agreement between them dated August 28, 1980, (1) Transco has agreed to receive up to a Maximum Daily Quantity of 40,000 Mcf attributable to Northern's interest in Ship Shoal Block 84, offshore Louisiana, and up to a Maximum Daily Quantity of 10,000 Mcf attributable to Northern's interest in Eugene Island Block 108, offshore Louisiana, and (2) Northern has agreed to receive up to a Maximum Daily Quantity of 50,000 Mcf per day attributable to Transco's interest in Mustang Island Area Blocks 757, 762 and 763 offshore Texas. The points of receipt where Transco would receive Northern's gas are (1) the point of interconnection between facilities originating in Ship Shoal Block 84 and Transco's Southeast Louisiana Gathering System in Ship Shoal Blocks 70 and 72, offshore Louisiana, and (2) the point of interconnection between proposed facilities originating in Eugene Island Block 108 and Transco's Southeast Louisiana Gathering System in Eugene Island Block 116, offshore Louisiana. Northern would receive Transco's gas in the Matagorda Island Area, offshore Texas, at points of interconnection between Transco's proposed Mustang Island Area facilities and Northern's proposed Matagorda facilities. The Agreement between the Applicants also provides that Northern will be obligated to amend the Agreement to add other sources of gas available to Transco capable of delivery to Northern's Matagorda facilities in the event gas available in Mustang Island Blocks 757, 762 and 763 does not completely utilize Transco's Maximum Daily Quantity of 50,000 Mcf. Additionally, to the extent sufficient capacity exists in its Matagorda facilities, Northern would be obligated to amend the Agreement to provide for an increase in Transco's Maximum Daily Quantity to 75,000 Mcf. To the extent Northern would be obligated to add additional sources for Transco, Northern may add comparable volumes to Northern's attributable working interest deliverable to Transco's system provided sufficient capacity is available.

Applicants state that they would transport for one another imbalance quantities of gas attributable to sources other than the Mustang Island Area, Ship Shoal Block 84 and Eugene Island Block 108. For such transportation, Northern would charge Transco the sum of (1) Northern's rate for service through its proposed Matagorda Facilities, and (2) the rate charged by Transco to Northern for transportation conducted pursuant to authority in Docket No. CP79-411. Transco would charge Northern the normal charge for similar transportation service.

It is stated that the exchange shall continue for a primary term of 15 years, and continue from year to year until terminated by either party upon written notice of one year. Applicants assert that the subject gas would help to maintain as adequate and reliable service as possible for their customers.

Any person desiring to be heard to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, provided no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2868 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-67-000]

Trans Louisiana Gas Co.; Renotice of Application

January 19, 1981.

Take notice that on November 24, 1980, Trans Louisiana Gas Company (Applicant), P.O. Box 4331, Lafayette, Louisiana 70502, filed in Docket No. CP81-67-000 an application pursuant to Section 1(c) of the Natural Gas Act for exemption from the provisions of the Natural Gas Act and Regulations of the Commission pertaining thereto, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that by order of February 20, 1962, in Docket No. CP62-129, Central Louisiana Electric Company, Inc. (CLECO) was declared exempt from Commission jurisdiction pursuant to Section 1(c) of the Natural Gas Act. It is further stated that CLECO is currently undergoing a corporate reorganization which result in the transferring and selling of its natural gas distribution properties along with its attendant gas supply contracts and customers to Applicant which would operate them.

Applicant submits that CLECO has applied to the Louisiana Public Service Commission (LPSC) for approval or non-opposition to the transfer of natural gas distribution properties and that following a hearing held by the LPSC on November 17, 1980, the LPSC indicated that it would permit the proposed transfer to occur. However, Applicant believes that such approval may be deferred pending issuance of the exemption requested herein.

It is stated that CLECO purchases and receives interstate gas from United States Gas Pipe Line Company (United) and that CLECO also, *inter alia,* purchases gas from Consumers Power Company and Michigan Consolidated Gas Company, pursuant to each such pipeline's blanket certificates issued by the Commission. It is further stated that none of the gas received by CLECO moves out of the State of Louisiana. Likewise, Applicant asserts that none of the gas that it would receive pursuant to the reorganization would move out of the state.

Applicant states that on October 20, 1980, the LPSC certified that natural gas rates, service, and facilities of CLECO are subject to its regulatory jurisdiction and that the LPSC is currently exercising such jurisdiction. The LPSC further certified that if official action of approval or non-opposition to the transfer is taken it would exercise the same authority with respect to Applicant, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2668 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-82-000]

United Gas Pipe Line Co. and Transcontinental Gas Pipe Line Corp.; Renotice of Application

January 19, 1981

Take notice that on December 4, 1980, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP81-82-000 a joint application pursuant to Section 7(c) of the Natural Gas Act authorizing the exchange of natural gas between Applicants, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to an October 2, 1980, agreement, United and Transco propose to exchange up to 7,000 Mcf of natural gas per day for a term of 15 years from the date of initial delivery. It is stated that United has natural gas available at the terminus of the U-T Offshore System (U-TOS) and Transco has natural gas reserves in Eugene Island Area Blocks 261 and 262, offshore Louisiana, which is connected to the pipeline system of Sea Robin Pipeline Company (Sea Robin) at Eugene Island Block 262.

Applicants assert that Transco would receive gas for the account of United at the point of interconnection between Transco's pipeline system and the terminus of U-TOS in Cameron Parish, Louisiana. United, it is asserted, would receive gas from Sea Robin for the account of Transco at Erath, Vermilion Parish, Louisiana.

It is stated the proposal herein would be a gas-for-gas exchange with no charge to either party by the other.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2669 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-85-M

Office of the Special Counsel for Compliance

Proposed Consent Order With the Charter Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with The Charter

Company (Charter), its subsidiaries and affiliates, including New England Petroleum Company (NEPCO) and Charter Oil Company. The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations for the period August 19, 1973 through November 30, 1980. To remedy any overcharges that may have occurred during the period, Charter agrees to $28 million in refunds and a limitation on the increased costs it may passthrough in future price increases.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on February 25, 1981. Address comments to: Charter Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Charter Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E-190.

SUPPLEMENTARY INFORMATION: Charter is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Charter engagees in, among other things, the refining, processing, reselling and marketing of products. An audit conducted by OSC included a review of Charter's records relating to compliance with the Regulations during the period August 19, 1973 through November 30, 1980 (the audit period). During the audit, questions and issues were raised. This Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, except that this Consent Order does not cover matters specifically excluded in the Consent Order.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Charter's compliance with the applicable Regulations. OSC's audit, now concluded, encompassed a review of Charter's pricing and allocation policies and procedures, and the manner in which Charter applied the Regulations with respect to, among other things, its refining, processing, reselling and marketing of covered petroleum products during the period of the Consent Order. At the conclusion of the audit, OSC raised certain issues with respect to Charter's application of the Regulations; however, Charter and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Charter has retreated from the positions taken previously on the issues addressed by this Consent Order and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Charter maintains that it has correctly construed and applied the regulations. The parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and conclusion of the audit of Charter and thus, the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

OSC has determined that the issues raised in the audit of Charter could be appropriately resolved by payments totalling $28.2 million and a reduction in Charter's banks of unrecouped costs. The components of these remedies are as follows:

1. Charter will make refunds totalling $15,000,000 to certain purchasers of residual fuel oil.

2. Charter shall issue credit memoranda of $3,333,333 each quarter for three quarters to its current utility customers.

3. An escrow account of $3,200,000 held at The First National Bank of Boston shall be disbursed at the direction of OSC.

4. Charter will reduce its banks of unrecouped increased costs of motor gasoline to $40,880,000, which represents a bank reduction of approximately $67 million.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Charter has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Charter or a finding by OSC of a violation of any federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order which, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2802 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Amerada Hess Corp.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR § 205.199J that it has entered into a Consent Order with Amerada Hess Corporation (Hess). The Consent order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations for the period March 1973 through July 1980. In consideration for the Consent Order, Hess has agreed to make bank adjustments and refunds of $135 million.

As required by the regulation cited above, OSC will receive comments on

the Consent Order for a period ending 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, until the Consent Order is made effective, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or if appropriate, issue the Consent Order as proposed.

COMMENTS: Comments must be received by 5:00 p.m. on February 25, 1981.

Address comments: Hess Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, Phone: 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Hess Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E-190.

SUPPLEMENTARY INFORMATION: Hess is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Hess engages in the production, refining and marketing of crude oil and refined petroleum products. The OSC audit included a review of Hess' records relating to compliance with the regulations during the period March 1973 through July 1980 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. This Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Hess' compliance with applicable Regulations pertaining to the production, refining and marketing of crude oil, motor gasoline, residual fuel oil, middle distillates, natural gas liquids (NGL), natural gas liquids products (NGLP) and other refined petroleum products. OSC's audit examined all areas of compliance including but not limited to: the sales and certifications of crude oil including property determinations; the calculation of monthly increased costs of product, including NGL's and NGLP's; non-product costs increases; the determination of, and prices charged to different classes of purchaser; and the crude oil transfer pricing, entitlements and mandatory oil import regulations.

Neither OSC nor Hess has retreated from the positions taken previously on the issues resolved by this Consent Order and each believes that its position on these issues is meritorious. However, the parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide satisfactory resolution of disputed issues and conclusion of the audit of Hess and thus the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

OSC has determined that the issues raised in the audit of Hess could be appropriately resolved by an aggregate adjustment of $135 million. The components of this remedy are as follows:

1. Refunds of $32 million shall be made to public utility and state and local government purchasers of various fuel oil products.
2. Hess shall pay $3 million to the Defense Fuel Supply Center.
3. Hess will deduct $100 million from its bank of unrecouped increased costs of motor gasoline.

In addition to the foregoing, Hess shall commit, prior to December 31, 1982, to make investments of $400 million for new, expanded or accelerated projects for the production and enhanced recovery of domestic oil and gas and increased refinery capacity.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order and prospective compliance with the regulations. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Hess has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Hess or a finding by OSC of a violation of any price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order which, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 6, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2561 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Ashland Oil, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR § 205.199J that it has entered into a Consent Order with Ashland Oil, Inc. (Ashland). The Consent Order was entered into between Ashland and DOE for the sole purpose of settling and finally resolving all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period January 1, 1973 through July 31, 1980. To remedy any overcharges that may have occurred during the period, Ashland agrees to $25 million in refunds and a limitation on the increased costs it may pass through in future price increases. Additionally, Ashland will, within the next two years, increase its expenditures for domestic exploration and production by $100,000,000 in projects designed to enhance U.S. energy independence and the efficiency of Ashland's refineries and related capital facilities.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period ending 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, until the Consent Order is made

effective, withdraw its acceptance of the Consent Order, attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on February 25, 1981. Address comments to: Ashland Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, Phone: 202–633–9165.

Copies of the Consent Order may be received free of charge by written request to: Ashland Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E–190.

SUPPLEMENTARY INFORMATION: Ashland, an independent refiner, is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE petroleum Price and Allocation Regulations (Regulations). Ashland engages in the importation, production, refining and sale of crude oil and covered petroleum products. The OSC audit included a review of Ashland's records relating to compliance with the regulations during the period January 1, 1973 through July 31, 1980 (the audit period). Except for the matters set forth in the Consent Order, this Consent Order resolves all civil issues not previously resolved concerning Ashland's importation, production, refining and sale of crude oil and covered products during the audit period.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Ashland's compliance with applicable Regulations pertaining to, among other things, the production, refining, processing, reselling and marketing of petroleum products. OSC's audit reviewed Ashland's pricing and allocation policies and procedures and the manner in which Ashland applied the Regulations with respect to its importation, production, refining and sale of crude oil and covered petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Ashland's application of the Regulations. However, since that time Ashland and DOE have agreed to resolve all matters, with the exceptions set forth in the Consent Order, concerning Ashland's compliance with the Regulations, regardless of whether these were heretofore asserted by either party.

Neither OSC nor Ashland has retreated from the positions taken previously on the issues resolved by this Consent Order and each believes that its position on these issues is meritorious. However, the parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Ashland audit and thus that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

1. Within 120 days after this publication of notice of the proposed Consent Order in the Federal Register, Ashland will distribute $10,000,000 from an escrow account to certain of its motor gasoline reseller customers to satisfy claims against Ashland. Within ten (10) days after the effective date of the Consent Order, Ashland shall establish this escrow account through a deposit of $10,000,000 in a special interest bearing account. The procedures for making the Consent Order effective are published at the end of this Federal Register Notice. Within sixty (60) days after this publication, any motor gasoline reseller customer of Ashland may assert a claim against Ashland for alleged violations of the Federal Petroleum Price and Allocation Regulations occurring during the period of the Consent Order by submitting its claim to: Mandatory Allocation Department, Ashland Oil, Inc., P.O. Box 391, Ashland, Kentucky 41101.

Claims must include a statement of the nature of the alleged overcharge and the amount claimed. Motor gasoline reseller customers who do not submit claims within this 60 day period will not thereafter be eligible to participate in payments under this fund. All payments from this fund are subject to the approval of Special Counsel.

2. Ashland will implement a program of price reductions or credit memoranda in the amount of $7,500,000 in sales of distillate and residual fuel oils to certain of its public utility customers, and $7,500,000 to certain of its bulk transportation account customers and its current purchasers of middle distillates for residential space heating. The program will be implemented by a reduction in the per unit selling prices to Ashland's current utility and transportation customers which purchase distillates and residual fuel oils refined by Ashland and to Ashland's current residential heating oil customers. Ashland will issue credit memoranda redeemable against future purchases of distillates and residual fuel oils to former utility and transportation customers. To receive refunds or price reductions, the utility customer's rates must be subject to fuel adjustment clauses. Transportation account customers will receive refunds if they made purchases of products subject to federal controls. The amount of credit issued to each recipient shall be determined according to a volumetric percentage of purchases and is subject to the approval of OSC.

3. Ashland will reduce its "banks" of unrecovered increased costs for motor gasoline to $75,000,000, and its "banks" of unrecovered increased costs for propane to $7,500,000. Because the Regulations permit banked costs to be passed through to purchasers in future prices, the reduction in banked costs provided for in the Consent Order limits the costs Ashland otherwise could have used to support higher prices in the future. This reduction represents a decrease of approximately $650 million.

4. Within 2 years, Ashland will make a firm commitment to increase its expenditures for domestic exploration and production by $100,000,000 in projects designed to enhance U.S. energy independence and the efficiency of Ashland's refineries and related capital facilities.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Ashland has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Ashland nor a finding by OSC of a violation of any price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 P.M. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as

a final order. Modifications of the Consent Order which, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2562 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With the Coastal Corp.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR § 205.199J that it has entered into a Consent Order with The Coastal Corporation (Coastal). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period August 19, 1973 through October 31, 1980. To remedy any overcharges that may have occurred during the period, Coastal has agreed to a refund of $17.5 million and limitations on the increased costs it may pass through in future motor gasoline and propane prices.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 P.M. on February 25, 1981.

Address comments to: Coastal Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, Phone: 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Coastal Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Room 1E-190.

SUPPLEMENTARY INFORMATION: Coastal is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Coastal engages in, among other things, the production, refining, processing, reselling and marketing of covered petroleum products.

An audit conducted by OSC included a review of Coastal's records relating to compliance with the Regulations during the period August 19, 1973 through October 31, 1980 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. Except for the matters set forth in the Consent Order, this Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Coastal's compliance with the applicable Regulations. OSC's audit reviewed Coastal's pricing and allocation policies and procedures, and the manner in which Coastal applied the Regulations with respect to, among other things, its refining, processing, reselling, and marketing of covered petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Coastal's application of the Regulations; however, Coastal and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Coastal has retreated from the positions taken previously on the issues addressed by this Consent Order, and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Coastal maintains that it has correctly construed and applied the Regulations. The parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Coastal audit and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any overcharges that may have occurred during the audit period, Coastal has agreed to the following:

1. Pursuant to this settlement, Coastal will refund a total of $17.5 million to its customers. Within thirty days of the effective date of the Consent Order, Coastal will refund up to $12.5 million to certain of it large volume end-user customers. Within ten days of the effective date of the Consent Order, Coastal will place $5 million in a fund for refunds to or on behalf of Coastal customers that do not receive a refund from the $12.5 million fund. The $5 million fund will be used to satisfy judgments against Coastal and to pay settlements between Coastal and its customers, subject to the approval of OSC, for alleged violations of the federal petroleum price and allocation regulations. Claims should be addressed to The Coastal Corporation, Nine Greenway Plaza, Houston, TX 77046. Twelve months after the effective date of the Consent Order, the balance remaining in the fund will be paid into the U.S. Treasury. In addition to the $17.5 million that Coastal will refund pursuant to the Consent Order, Coastal has already made adjustments of approximately $12,016,000 to correct errors or resolve controversies arising out of Coastal's sales of covered petroleum products during the audit period.

2. Effective October 31, 1980, Coastal will reduce its "banks" of unrecovered increased costs for motor gasoline to $75 million with $20 million of that restricted in use, e.g., for price maintenance purposes as provided for in the Regulations. In addition, effective October 31, 1980, Coastal will reduce its banks of unrecovered increased costs for propane to $25 million. Because the Regulations permit banked costs to be passed through to purchasers in future prices, the reduction in banked costs provided for in the Consent Order limits the costs Coastal otherwise could have used to support higher prices in the future. This reduction represents a

decrease of $300 million in Coastal's banked costs.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Coastal has waived its right to an administrative or judicial appeal. The Consent Order does not constitute and dmission by Coastal nor a finding by OSC of a violation of any federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 P.M. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2563 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Commonwealth Oil Refining Company, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Commonwealth Oil Refining Company, Inc. (Corco). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations for the period January 1974 through July 1980 (the period of the Consent Order). To remedy any overcharges that may have occurred during the period. Corco agrees to make $10 million in refunds.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered comments must be received by 5:00 p.m. on February 21, 1981. Address comments to:

Corco Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Mail Stop 4111, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to:

Corco Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Mail Stop 4111, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E-190.

SUPPLEMENTARY INFORMATION: Corco is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Corco engages in the refining and marketing of crude oil and refined petroleum products. An audit conducted by OSC included a review of Corco's records relating to compliance with the Regulations during the period January 1, 1974 through July 31, 1980 (the audit period). During the audit, questions and issues were raised. This Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Corco's compliance with the applicable Regulations pertaining to the refining and marketing of crude oil, motor gasoline, residual fuel oil, and other refined petroleum products. OSC's audit, now concluded, encompassed a review of Corco's pricing and allocation policies and procedures, and the manner in which Corco applied the Regulations with respect to its importation, refining, and sale of crude oil and covered petroleum products during the period of the Consent Order. At the conclusion of the audit, OSC raised certain issues with respect to Corco's application of the Regulations; however, Corco and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Corco have retreated from the positions taken previously on the issues addressed by this Consent Order and each believes that its position on these issues is meritorious. The parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and conclusion of the audit of Corco and thus, the Consent Order is in the public interest.

Corco has been operating under Chapter XI of the Federal Bankruptcy Act since March 2, 1978. On December 10, 1980, the Bankruptcy Court for the Western District of Texas authorized Corco to enter into the Consent Order with DOE.

Terms and Conditions of the Consent Order

OSC determined that the issues raised in the audit of Corco could be appropriately resolved by an aggregate refund of $10 million, to be comprised of the following:

1. Corco shall refund to consumers upon the Island of Puerto Rico the aggregate sum of $10,000,000, which consumers will be identified by Corco and subject to the approval of the DOE. The refund will be made in accordance with the following schedule: (a) Beginning the second month following the month in which an order of the United States Bankruptcy Court for the Western District of Texas confirming Corco's plan of arrangement under Chapter XI Bankruptcy Act becomes a final order, Corco shall refund to the Puerto Rico Electric Power Authority $500,000 per month for a period of six (6) months; and (b) beginning the eighth month following such date, Corco shall refund the balance, $7,000,000 to the Commonwealth of Puerto Rico by remitting $291,667 per month for a period of twenty (20) months. The Commonwealth will use the fund for energy conservation and cost reduction purposes subject to the approval of the Secretary of Energy.

2. In addition, Corco has agreed to amend its banks of unrecovered

increased costs for motor gasoline and propane in the first month following that month in which the Consent Order is made effective or the orders of the United States Bankruptcy Court for the Western District of Texas have become final (the month of implementation). At that time Corco will reduce its bank of unrecovered increased costs for motor gasoline to $50,000,000 exclusive of increased costs incurred in or after the month of implementation. In the month of implementation, Corco will also reduce its banks of unrecovered increased costs for propane to $3,000,000, exclusive of increased costs incurred in or after the month of implementation. "Unrecouped increased costs" are amounts which Corco could have used to support higher gasoline and propane prices. Corco was entitled to bank those costs not passed through in higher prices and pass them through in future prices. Reduction of the propane and gasoline banks will deny Corco the opportunity to pass through those amounts in future price increases.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the order will be a final order of DOE to which Corco has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Corco or a finding by OSC of a violation of any federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order which, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 14, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2564 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Koch Industries, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR § 205.199J that it has entered into a Consent Order with Koch Industries, Inc. (Koch). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period March 6, 1973 through November 30, 1980. To remedy any overcharges that may have occurred during the period, Koch agrees to a refund component of $14 million and a limitation of its unrecovered costs it may pass through in its motor gasoline and propane prices.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on February 21, 1981. Address comments to: Koch Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, Phone: 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Koch Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E-190.

SUPPLEMENTARY INFORMATION: Koch is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Koch engages in, among other things, the production, refining, processing, reselling and marketing of covered petroleum products.

An audit conducted by OSC included a review of Koch's records relating to compliance with the Regulations during the period March 6, 1973 through November 30, 1980 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. Except for the matters set forth in the Consent Order, this Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Koch's compliance with the applicable Regulations. OSC's audit reviewed Koch's pricing and allocation policies and procedures, and the manner in which Koch applied the Regulations with respect to, among other things, its refining, processing, reselling, and marketing of covered petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Koch's application of the Regulations; however, Koch and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Koch had retreated from the positions taken previously on the issues addressed by this Consent Order, and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Koch maintains that it has correctly construed and applied the Regulations. The parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Koch audit and thus, the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

OSC has determined that the issues raised in the audit of Koch could be appropriately resolved by payment and a price reduction totalling $14 million. The components of these remedies are as follows:

1. Koch shall refund $4 million to certain utility customers,

2. Koch will refund $4 million to certain State or local government or transportation customers.

3. Within fourteen days of the effective date of the Consent Order, Koch shall place $4 million in a fund for refunds on behalf of Koch's customers. The $4 million fund will be used to satisfy judgements against Koch and to pay settlements between Koch and its customers, subject to the approval to OSC, for alleged violations of the federal petroleum price and allocation regulations. Claims should be addressed to Koch Industries, Inc., Post Box 2256, Wichita, Kansas 67201. Six months after the effective date of this Consent Order, the balance remaining in the fund will be distributed among the identified State and local government and transportation customers referred to in paragraph 2 above.

4. Koch shall implement a price reduction of $.03 per gallon in sales of motor gasoline at service stations owned and operated by Koch until a total of $2 million has been refunded.

5. Effective October 31, 1980, Koch will reduce its "bank" of unrecovered increased costs for motor gasoline to $70 million, with $45 million of that restricted in use, e.g., for price maintenance purposes as provided for in the Regulations. Effective October 31, 1980, Koch will also reduce its "bank" of unrecovered increased costs for propane to $5 million.

Because the Regulations permit banked costs to be passed through to purchasers in future prices, the reduction in banked costs provided for in the Consent Order limits the costs that Koch could otherwise have used to support higher prices in the future. This reduction represents a decrease of $277 million in Koch's banked costs.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Koch has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Koch nor a finding by OSC of a violation of any federal price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2565 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Pennzoil Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR § 205.199J that it has entered into a Consent Order with Pennzoil Company (Pennzoil). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period March 6, 1973 through December 31, 1980. To remedy any overcharges that may have occurred during the period, Pennzoil has agreed to a cash payment of $10 million and to limitations on the amount of its unrecovered increased costs it may pass through in its motor gasoline prices in the future.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 P.M. on February 25, 1981. Address comments to: Pennzoil Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, Phone: 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Pennzoil Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E-190.

SUPPLEMENTARY INFORMATION: Pennzoil is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Pennzoil engages in, among other things, the production, refining and sale of crude oil and refined petroleum products. An audit conducted by OSC included a review of Pennzoil's records relating to compliance with the Regulations during the period March 6, 1973 through December 31, 1980 (the audit period). Except for the matters excluded from the settlement in the Consent Order, This Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Pennzoil's compliance with the applicable Regulations. OSC's audit reviewed Pennzoil's pricing and allocation policies and procedures, and the manner in which Pennzoil applied the Regulations with respect to, among other things, its refining and sale of crude oil and covered petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Pennzoil's application of the Regulations; however, Pennzoil and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Pennzoil has retreated from the positions taken previously on the issues addressed by this Consent Order, and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Pennzoil maintains that it has correctly construed and applied the Regulations. The parties desire to resolve the issues raised

withour resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of its audit of Pennzoil and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any overcharges that may have occurred during the audit period, Pennzoil has agreed to a $10 million cash payment and a limitation on the amount of its unrecovered increased costs it may pass through in its prices for motor gasolines.

1. The $10 million cash payment consists of two elements. First, within 30 days after the effective date of the Consent Order, Pennzoil will remit $3 million to OSC for distribution by DOE's Office of Hearings and Appeals (OHA) in accordance with the provisions of Subpart V of Part 205 of the DOE Regulations. Pursuant to these provisions, OSC will petition OHA for the implementation of special refund procedures to evaluate refund claims submitted to OHA by persons who believe they may have been overcharged by Pennzoil during the audit period. Second, within 60 days after the effective date of the Consent Order, Pennzoil will refund $3.5 million to its electric utility customers.

2. Effective December 31, 1980, Pennzoil will reduce its "bank" of unrecovered increased costs for motor gasoline to $30 million with $15 million of that restricted in use, e.g., for price maintenance purposes as provided for in the Regulations. Because the Regulations permit banked costs to be passed through to purchasers in future prices, the reduction in banked costs provided for in the Consent Order limits the costs that Pennzoil could otherwise have used to support higher prices in the future. This reduction represents a decrease of $33 million of Pennzoil's banked costs.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Pennzoil has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Pennzoil nor a finding by OSC of a violation of any Federal price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 P.M. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f)

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2566 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Tenneco Oil Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR § 205.199J that it has entered into a Consent Order with Tenneco Oil Company (Tenneco). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period March 6, 1973 through December 31, 1980. To remedy any overcharges that may have occurred during the period, Tenneco has agreed to a cash payment of $14 million and to limitations on the amounts of its unrecovered increased costs it may pass through in the prices it charges for motor gasoline and propane.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 P.M. on February 25, 1981. Address comments to: Tenneco Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, Phone: 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Tenneco Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E-190.

SUPPLEMENTARY INFORMATION: Tenneco is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Tenneco engages in the refining and sale of crude oil and covered petroleum products as well as other petroleum-related activities.

An audit conducted by OSC included a review of Tenneco's records relating to compliance with the Regulations during the period March 6, 1973 through December 31, 1980 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. Except for the matters excluded from the settlement in the Consent Order, this Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Tenneco's compliance with the applicable Regulations. OSC's audit reviewed Tenneco's pricing and allocation policies and procedures, and the manner in which Tenneco applied the Regulations with respect to, among other things, its refining and sale of crude oil and covered petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Tenneco's application of the Regulations; however, Tenneco and DOE have agreed to resolve all matters whether or not raised

by the audit or heretofore asserted by either party.

Neither OSC nor Tenneco has retreated from the positions taken previously on the issues addressed by this Consent Order, and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Tenneco maintains that it has correctly construed and applied the Regulations. The parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of its audit of Tenneco and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any overcharges that may have occurred during the audit period, Tenneco has agreed to a cash payment of $14 million and to limitations on the amounts of its unrecovered increased costs it may pass through in the prices it charges for motor gasoline and propane.

1. The $14 million cash payment consists of three elements. First, within 30 days after the effective date of the Consent Order, Tenneco will remit $4 million to OSC for distribution by DOE's Office of Hearings and Appeals (OHA) in accordance with the provisions of Subpart V of Part 205 of the DOE Regulations. Pursuant to these provisions, OSC will petition OHA for the implementation of special refund procedures to evaluate refund claims submitted to OHA by persons who believe they may have been overcharged by Tenneco during the audit period. Second, within 60 days after the effective date of the Consent Order, Tenneco will refund $8 million to purchasers of heating oil and propane. Third, also within 60 days of the effective date of the Consent Order, Tenneco will refund $2 million to certain direct end-user purchasers of petroleum products (including electric utility companies and regulated transportation companies) and others.

2. Effective December 31, 1980, Tenneco will reduce its "bank" of unrecovered increased costs for motor gasoline to $30 million with $15 million of that restricted in use, e.g., for price maintenance purposes as provided for in the Regulations. Effective December 31, 1980, Tenneco will reduce its "bank" of unrecovered increased costs for propane to $7 million. Because the Regulations permit banked costs to be passed through to purchasers in future prices, the reduction in banked costs provided for in the Consent Order limits the costs Tenneco could otherwise have used to support higher prices in the future. This reduction represents a decrease of $144 million of Tenneco's banked costs.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Tenneco has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Tenneco nor a finding by OSC of a violation of any federal price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2567 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Tosco Corporation

AGENCY: Department of Engery (DOE).

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR §205.199J that it has entered into a Consent Order with Tosco Corporation (Tosco). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period August 19, 1973 through December 31, 1980. To remedy any overcharges that may have occurred during the period, Tosco has agreed to a refund of $4 million and a limitation on the increased costs it may pass through in future motor gasoline and propane prices.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period ending 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, until the Consent Order is made effective, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on February 25, 1981. Address comments to: Tosco Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, Phone: 202-633-9165.

Copies of the Consent Order may be received free of charge by written request to: Tosco Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E-190.

SUPPLEMENTARY INFORMATION: Tosco, an independent refiner, is one of the 34 major refiners presently subject to audit by OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Tosco engages in, among other things, the refining, and sale of crude oil and covered petroleum products. The OSC audit included a review of Tosco's records relating to compliance with the regulations during the period August 19, 1973 through December 31, 1980 (the audit period). Except for the matters set forth in the Consent Order, this Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Tosco's compliance with the applicable Regulations. OSC's audit

reviewed Tosco's pricing and allocation policies and procedures, and the manner in which Tosco applied the Regulations with respect to its importation, production, refining and sale of crude oil and covered petroleum products during the audit period. At the conclusion of the audit, OSC raised certain issues with respect to Tosco's application of the Regulations; however, Tosco and DOE have agreed to resolve all matters whether or not raised by the audit or heretofore asserted by either party.

Neither OSC nor Tosco has retreated from the positions taken previously on the issues addressed by this Consent Order, and each believes that its position on these issues is meritorious. However, the parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Tosco audit and thus, the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any overcharges that may have occurred during the audit period, Tosco has agreed to the following:

1. By check or credit memoranda, Tosco will refund $4 million to certain of its utility customers whose rates are subject to fuel adjustment clauses. One half of the refund to each such customer will be paid within 30 days after the Consent Order becomes effective; the balance within 12 months of the effective date of the Consent Order.

2. Effective December 31, 1980 Tosco will reduce its "bank" of unrecovered increased costs for motor gasoline to $30 million, with $5 million of that limited solely to use for price maintenance purposes as provided in the Regulations. In addition, effective December 31, 1980, Tosco will reduce its bank of unrecovered increased costs for propane to zero. Because the Regulations permit banked costs to be passed through to purchasers in future prices, the reduction in banked costs provided for in the Consent Order limits the costs that Tosco otherwise could have used to support higher prices in the future. This reduction represents a decrease of $38 million in Tosco's banked costs.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Tosco has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Tosco nor a finding by OSC of a violation of any federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order which, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., January 19, 1981.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 81-2568 Filed 1-23-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51206; TSH-FRC 1737-1]

A Resin From Bisphenol A—Epichlorohydrin Copolymer, Bisphenol A, Linseed Oil Fatty Acids, Tall Oil Fatty Acids, Styrene, and Acrylic Acid; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by February 13, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Mary Cushmac, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, D.C. 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures

from use, and a generic name for the chemical. EPA will publish the generic name, te generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determined that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extention is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A). Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before February 13, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51206]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.

Edward A. Klein,

Director, Chemical Control Division

PMN 80-362

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 15, 1981.

Manufacturer's Identity. International Minerals and Chemical Corporation.

Specific Chemical Identity. A resin from bisphenol A—epichlorohydrin copolymer, bisphenol A, linseed oil fatty acids, tall oil fatty acids, styrene, and acrylic acid.

Use. Vehicle in primers for automobiles and possibly appliances.

Production Estimates. Approximately 500,000 lb/yr.

Physical Properties:

Acid number, mg KOH/g—49.

Appearance—Semisolid or liquid.

Color (Gardner)—8 max.

Toxicity Data. The manufacturer states that: No toxicity data are available on the PMN substance; since it is a polymeric material, it is not likely to present a toxicity hazard. The manufacturer provided toxicity data on the raw materials.

Exposure. The manufacturer states that two to three people will be exposed for 1/2 to 2 hours, approximately 20 times per year during the manufacturing process.

Environmental Release/Disposal. The manufacturer states that disposal will not be necessary, and that, in the event of an inadvertent spill, product would be absorbed by a mineral absorbent and removed to an approved chemical waste disposal site.

[FR Doc. 81-2681 Filed 1-23-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51207; TSH-FRL 1736-8]

Polyester Polymer of Aliphatic Polyols, Aromatic Diacid, and Aliphatic Diacid; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by February 8, 1981.

ADDRESSES: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemcial Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, D.C. 20460, (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of may 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential

information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentially claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). This section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before February 8, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51207]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-354

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 10, 1981.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polyester polymer of aliphatic polyols, aromatic diacid, and aliphatic diacid.

Use. Adhesive.

Production Estimates. No data were submitted.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. The manufacturer states that the PMN substances has an approximate oral lethal dose, rat, of greater than 11,000 mg/kg.

Exposure.

Activity	Exposure route(s)	Max. number exposed	Max. duration		Concentration	
			Hr/da	Da/yr	Average	Peak
Manufacturing	Dermal	3	8	250		
Use	Dermal	3/shift, 1-2 shifts per day.	8	250		

The manufacturer states that no occupational or environmental hazard is expected in manufacture, distribution, end use, or disposal of the PMN substance.

Environmental Release/Disposal. The manufacturer states that wash solvent will be recycled and consumed in subsequent batches. Wastes generated during processing will be incinerated or disposed of by landfill.

[FR Doc. 81-2680 Filed 1-23-81; 8:45 am]

BILLING CODE 6560-31-M

[AH-FRL 1725-3]

Reproposed Determination Under Subsection 125(a) of the Clean Air Act; Availability of Coal Use, Economic and Unemployment Impact Information

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of EPA's reproposed determination under subsection 125(a) of the Clean Air Act and availability of industry coal use projections and resulting economic and unemployment impact reports.

SUMMARY: EPA reaffirms its proposed determination of September 6, 1979 (44 FR 52030) under subsection 125(a) of the Clean Air Act (Act), 42 U.S.C. 7425(a) that local and regional economic and employment impacts that have occurred or would occur as certain Ohio utilities implement plans to switch coal supplies to comply with sulfur dioxide emission limitations are not sufficiently significant to necessitate action under subsections 125 (b) and (c) of the Act. This reproposed determination is based on an analysis of the record compiled in the subsection 125(a) proceedings, the Ohio coal market impacts of recent actions taken by EPA with respect to the Ohio State Implementation Plan (SIP) applicable to certain Ohio power plants, and recently updated coal use projections furnished by Ohio public utilities and private industrial facilities. This notice establishes a 30-day comment period. EPA will announce a final determination following the close of the public comment period. A final determination consistent with this reproposed determination would terminate the EPA Section 125 proceedings in Ohio.

DATES: Comments must be received on or before February 25, 1981. The record established for the Section 125 proceedings initiated July 13, 1978 and continued for EPA's proposed determinations issued December 28, 1978 and September 6, 1979 will remain open for purposes of the present reproposal. Written comments and hearing transcripts already part of this record, as well as any information received during the comment period announced today, will be considered by EPA in its final determination.

ADDRESSES: Written comments on today's reproposed determination should be submitted to F. J. Biros, Office

of Enforcement, EN-335, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public record for this determination is available for inspection during regular business hours at the following locations.

Air Programs Branch, Air and Hazardous Materials Division, U.S Environmental Protection Agency, Region V, 230 Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460

Cleveland Public Library, Main Branch, 325 Superior Avenue, Cleveland, Ohio 44114

Columbus Public Library, Main Branch, 96 South Grant, Columbus, Ohio 43215

St. Clairsville Public Library, 108 West Main Street, St. Clairsville, Ohio 43950

FOR FURTHER INFORMATION CONTACT:

F. J. Biros, Office of Enforcement, EN-335, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone: [202] 426-8710

SUPPLEMENTARY INFORMATION:

Background

Section 125 of the Clean Air Act Amendments of 1977 grants the President the authority to prevent or minimize significant adverse economic damage which might affect certain areas of the country if sources attempted to comply with the Act by switching from the use of local or regional coal to nonlocally or nonregionally available coal. A prerequisite to remedial action under Section 125 is a final determination under Section 125(a) that such damage would result. Specifically, subsection 125(a) authorizes the Administrator of EPA or the President (or his designee) to determine whether action authorized under subsection 125(b) is necessary to prevent or minimize significant local or regional disruption which would otherwise result from use by any major fuel burning stationary source of fuels other than locally or regionally available coal or coal derivatives to comply with a State's implementation plan requirements.

EPA received petitions in the first half of 1978 from the United Mine Workers of America, District 6, and others seeking to initiate actionunder Section 125. EPA published notice of these petitions and instituted proceedings on July 13, 1978 (43 FR 30113). The notice announced EPA's decision to evaluate under subsection 125(a) certain named Ohio utilities, solicited public comment on the issues raised in the petitions, and set several public hearing dates.

On June 12, 1978, EPA requested information from the Ohio utilities with regard to their coal use plans for complying with the sulfur dioxide regulations. In addition, EPA initiated several consultant studies to develop background information necessary for any determination under subsection 125(a).

On December 28, 1978 (43 FR 60652), EPA proposed to determine under subsection 125(a) that action may be necessary to prevent or minimize significant local or regional economic disruption that would result from the projected use by major fuel burning stationary sources operated by the named Ohio utilities of coal or coal derivatives not locally or regionally available. Hearings were held January 30, 1979. (44 FR 12103, March 5, 1979)

On September 6, 1979 EPA issued a second proposed determination that local and regional economic and employment impacts expected to occur if certain Ohio utilities proceeded with plans to switch coal supplies to comply with sulfur dioxide emission limitations were not sufficiently significant to necessitate action under subsection 125(a) of the Act. This proposed determination was based on a refined analysis of the coal use projections and on the coal market effects of events which dramatically reduced projected coal curtailments and unemployment estimated by EPA in the previous proposed determination. The refined analysis took into account only changes in high sulfur coal demand from the local and regional area resulting directly from a utility's intent to comply with Ohio's sulfur dioxide emission limitations if these changes occurred after July, 1978 and not changes unrelated to reasons of compliance with SIP requirements.

The causes of the unrelated changes included coal switches due to unsuitability of Ohio coals for combustion at specific boilers independent of sulfur content; changes in projected plant capacity; the unusual nature of coal purchases during 1977 related to strikes and weather; and, the level of preparation of the coal. Other events taken into account in the proposed detemination included changes in coal demand resulting from an agreement reached during EPA negotiations with Ohio utilities in early 1979. In addition, the coal curtailment data included coal market effects projected to result from EPA's proposed revision to the sulfur dioxide emission limitations for Cleveland Electric Illuminating Co.'s Avon Lake and Eastlake power plants in Ohio. 44 FR 33711 (June 12, 1979).

Since September 6, 1979 EPA has acquired updated coal use information from certain Ohio utilities; considered the coal use plans of private industrial facilities in Ohio operating major fuel burning stationary sources potentially subject to Section 125 action; and, evaluated especially the coal use projections of Cleveland Electric Illuminating Co. In view of EPA's promulgation of revised emission limitations for this utility on June 24, 1980 (45 FR 42279). EPA has completed an analysis of this coal use data and presents that information in this notice of reproposed determination under subsection 125(a) for public review prior to making a final determination. The coal use data, disclosable pursuant to EPA's confidentiality determination under 40 CFR Part 2 Discussed below, and complete analysis are available at the locations indicated above.

Rationale

The September 6, 1979 notice indicated that 3.06 million tons per year of coal and 910 Ohio coal mining jobs would be lost due to fuel switching by Ohio utilities to comply with sulfur dioxide emission limitations. This coal curtailment represented a 6.5% reduction in total Ohio coal production. Job losses were projected to range from 2.9% to 14.5% of the coal mining labor force in Ohio counties most adversely affected. The reduction in coal mining employment state-wide would be 6.0% between 1977 and 1980. Taking into account jobs lost in other employment sectors due to a "ripple effect," the overall state-wide employment impact would amount to 0.05% of Ohio's total labor force. In EPA's analysis, these projections of economic damage and unemployment fell short of the level of "significance" EPA believes warrants federal action under Section 125 and were therefore, considered not sufficiently significant to necessitate federal action 44 FR at 52031 (September 6, 1979).

At public hearings conducted pursuant to the September 6, 1979 proposed determination, EPA presented upwardly revised estimates of high sulfur coal curtailments in Ohio which, were based on additional information supplied by the United Mine Workers of America, District 6 in October, 1979. The revised data showed that coal curtailment resulting from SIP compliance would amount to 3.96 million tons per year. This coal curtailment corresponded to a loss of 1,670 mining jobs.

In the early part of 1980, under authority of Section 114 of the Act, EPA requested certain Ohio utilities to update their coal use projections originally submitted to EPA in late 1978. A similar request was made of a number of industrial firms operating power plants or combustion facilities in Ohio which were of sufficient size to be potentially within the major fuel burninig stationary source definition of Section 125 at 42 U.S.C. 7425(d). In October, 1980 EPA requested updated coal use information from Cleveland Electric Illuminating Co., the largest Ohio high sulfur coal user, which would take into account the revisions to the sulfur dioxide emission limitations for the Avon Lake and Eastlake power plants promulgated by EPA on June 24, 1980, 45 FR 42279. The revised coal use projections were sought to update economic and employment impacts for this reproposed determination. The coal use projections and other utility and industrial firms' information have been used as a basis for the analyses presented in this reproposed determination. Information submitted to EPA and not exempt from public disclosure as determined by EPA on December 15 and 23, 1980 under authority of the Freedom of Information Act, 5 U.S.C. 552, and regulations implementing this act at, 40 CFR Part 2 (41 FR 36902 et seq., September 1, 1976 as amended at 43 FR 39997 et seq., September 8, 1978) is available in the record for this reproposed determination at library locations indicated above.

The determination by EPA that portions of the submitted material were entitled to confidential treatment under EPA regulations has resulted in an analysis somewhat modified from that presented in the September 6, 1979 proposed determination. EPA has determined that implicit or explicit disclosure of the identity of coal suppliers to the utilities (and industrial firms) would likely result in harm to the competitive position of the utilities and firms providing the information. Consequently, economic and employment impacts discussed below are provided on a state-wide and 23 county (southeastern Ohio) basis and not on the county-by-county basis presented in EPA's previously proposed determinations. A copy of EPA's confidentiality determination relevant to these proceedings is available in the public record at the locations specified above.

As discussed further below, revised estimates now indicate that 4.05 million tons per year of coal and 1,890 coal mining jobs would be lost due to fuel switching by Ohio utilities and industrial facilities to comply with sulfur dioxide limitations in the time period 1977 to 1980. These data have not changed significantly since EPA's revised estimates were presented at the public hearing held pursuant to the September 6, 1979 proposed determination in St. Clairsville, Ohio on November 20, 1979.

As projected in EPA's September 6, 1979 proposed determination, not all economic disruption and unemployment has been avoided. Nevertheless, it is clear from legislative history that Congress intended federal intervention under Section 125 to be instituted when such impacts were found to be "significant" and not simply if impacts were found to have occurred. By "significant," Congress meant "serious," "severe," or "exceptional" and not just any economic damage. 123 Cong. Rec. H5027, May 25, 1979; 123 Cong. Rec. 59449–59457 June 10, 1977.

EPA's reproposed determination is that present projections of Ohio coal curtailments, economic damage, and mining and related unemployment fall short of the level of significance contemplated by Congress in enacting Section 125 of the Act. Since by this proposed determination the coal curtailments and economic and employment impacts do not reach the threshold of significance required by Section 125(a) of the Act, federal action under subsections 125 (b) and (c) is not warranted.

Tables presenting EPA's current projections of economic and employment impacts are set forth in the appendices to this notice and are described below. The technical basis for this reproposed determination may be found in two documents entitled: "Updated Estimates—Potential Impacts of Power Plant Compliance with Ohio SO_2 Emission Limitations on the Ohio Coal Market," and "Ohio 125 Study—Further Revisions to the Regional Economic Impact Estimates." Copies of the reports are available for public inspection at the locations indicated above.

Projected Coal Curtailment

As presented in Appendix A, the total acutual and projected loss in Ohio coal production resulting from the shift to compliance coal by certain major Ohio power plants is 4.05 million tons per year. The coal curtailment is calculated to occur in the period 1977 to 1980 as result of the plans of Ohio utilities to comply with sulfur dioxide emission limitations.

As in EPA's proposed determination of September 6, 1979, shifts in demand for high sulfur coal attributable to causes other than compliance with the Ohio SIP sulfur dioxide limitations or resulting from shifts in demand by out-of-state utilities are not included in this coal curtailment estimate. Furthermore, coal curtailments resulting from changes affected prior to the July 13, 1978 Notice of Proceedings under Section 125 in Ohio are not included in the data serving as a basis for this reproposed determination.

Data furnished by industrial firms in Ohio showed that no net Ohio coal curtailment would result from the coal procurement plans of this sector of Ohio businesses at their major fuel burning stationary sources. As with the public utility analysis, only coal switches resulting from a firm's intent to comply with SO_2 emission regulations were considered.

The estimated coal curtailment of 4.05 million tons per year resulting from utility compliance with SO_2 regulations represents an 8.6% drop in coal production in Ohio's 1977 level which amounted to 46.9 million tons. When all other factors affecting coal switches for all Ohio-based utilities are taken into account (that is, including switching unrelated to compliance with SO_2 emission limitations), the total decreases in demand for Ohio coal by all Ohio-based utilities amount to 2.7 million tons on an annual basis. This includes increases in demand for Ohio coal by the Mansfield power plant in Pennsylvania operated by the Ohio based CAPCO group and American Electric Power Co. plants in Ohio.

The total loss in Ohio coal production estimated in this analysis which results from coal switches by both Ohio-based utilities and out-of-state utilities is 6.76 million tons per year. Ohio coal curtailments resulting from switches by out-of-state utilities, however, are not factored into the economic and employment impact estimates. EPA considers these curtailments to be outside the scope of the analysis for the Ohio Section 125 proceedings since the the southeastern Ohio coal producing area is not locally or regionally situated with respect to these out-of-state major fuel burning stationary sources.

Projected Employment Impacts

For purposes of this proposed determination, the Ohio coal curtailment estimate of 4.05 million tons per year was used as the principal basis for the economic and employment impact analysis. As indicated in Appendix B, EPA estimates that the total actual and projected curtailment in Ohio coal production due to certain major Ohio power plants switching to low sulfur

coal in order to comply with the Ohio sulfur dioxide regulations by 1980 resulted in an estimated loss of 1,890 mining jobs in Ohio's southeastern coal producing counties. This represents approximately 12.4% of Ohio's total coal miner work force of 15,200 active coal miners in 1977. The miner job displacement data were estimated to the extent possible by tracing supplies of Ohio coal expected to be terminated by Ohio utilities to individual mines producing that coal. The job loss estimates are to a large extent associated with coal mine production serving principally the spot purchase market which is normally a relatively insecure element of the coal production economy.

As a result of the estimated Ohio mining job loss figures, jobs in other employment sectors would also appear to be affected due to a "ripple effect" (Appendix B and C). The total unemployment attributable to the actual and projected Ohio power plant SO_2 compliance coal switch estimated by EPA would amount to between 4,725–5,480 jobs state-wide. This figure represents approximately 0.1% of the state's total labor force of 5,021,000 persons (Appendix C). The total unemployment due to the Ohio SIP in the 23 county southeastern Ohio coal producing area estimated by EPA ranges from 4,252–4,915 jobs. This corresponds to approximately 0.7% of the total employment in this area of Ohio (Appendix C).

Projected Local and Regional Economic Impacts

The EPA estimated economic impacts are summarized in Appendix B. The loss of 1,890 mining jobs would result in a direct wage loss of $132 million annually for miners alone. This is based on the 1977 average income of $17,000 for coal miners. In comparison with 1977 levels, EPA estimates that when the ripple effects throughout all industries are included a total of $77–90 million in annual household income would be lost state-wide. Wage losses in the non-mining job sector would range from $45–58 million state-wide. In the 23 county area, the total annual wage loss estimated by EPA is $64–70 million. Wages lost in the non-mining job sector of the southeastern area of Ohio are estimated to be $32–38 million. The direct mine wage loss of $32 million is expected to occur primarily in this area of Ohio.

Unemployment benefits, payable for a maximum of 26 weeks under Ohio's unemployment compensation laws would be available to many of those unemployed. Assuming that all those who are unemployed apply for and receive the benefits for the maximum period, the state-wide benefits would total between $12.8–14.6 million. This would represent less than 4% of the state's unemployment benefit payments in 1977. Benefit payments would result in a state expenditure of $12.8–14.6 million state-wide with $11.7–13.3 million of this outlay paid in the southeastern Ohio area (Appendix B). Benefit payments in the mining job sector are estimated to be $6.0 million.

In total, the loss of 4.05 million tons of annual coal production and the resultant unemployment of 1,890 miners would contribute to a loss of $135 million in the annual Ohio gross state product. This decline in business activity represents less than 0.2% of Ohio's 1977 gross state product estimated to range between $100 and $110 billion.

Conclusion and Action

On the basis of the updated findings presented here, EPA reaffirms its proposed determination of September 6, 1979 pursuant to subsection 125(a) of the Act, 42 U.S.C. 7425(a), that projected local and regional economic and unemployment impacts that may have occurred or would occur if certain Ohio utilities continue with plans to switch from high sulfur coal to low sulfur coal to comply with sulfur dioxide emission limitations are not sufficiently significant to necessitate action under subsections 125 (b) and (c), 42 U.S.C. 7425 (b) and (c).

This proposed determination, when finalized, would terminate Section 125 proceedings in Ohio announced by EPA on July 13, 1978 (43 FR 30113) and would permit certain Ohio utilities to continue their plans to comply with the sulfur dioxide limitations specified in the Ohio state implementation plan.

EPA Recommendations

EPA's experience with Section 125 casts considerable doubt on the workability of this portion of the statue. Section 125 has proven to be cumbersome, tending to create conflicts between potentially displaced workers and other economic and industrial interests.

Earlier in this notice, EPA stated its proposed determination that the loss of 1,890 coal mining jobs in a 23 county area does not constitute "significant local or regional economic disruption and unemployment" justifying the actions the government could order under this section. Nevertheless, these losses represent a hardship to all concerned: the miners and their families, whose lives are disrupted; the communities that count on their social contribution and tax dollars; and the local business community, which is also adversely affected.

Factors considered by EPA in this proposed determination are the high economic and environmental costs of compliance plans alternative to low sulfur coal by Ohio utilities which would prevent or minimize Ohio coal curtailments. To achieve compliance while burning high sulfur coal certain Ohio utilities would have to install stack gas scrubbing systems or other equipment which would delay compliance and result in higher cost to electricity consumers in Ohio. EPA believes that under different circumstances, the coal curtailments and related economic and employment impacts of the magnitude estimated in the present analysis could be considered sufficiently significant to warrant Section 125 action, i.e., if the associated economic and environmental costs of such remedial action were not as great.

Implementation of Section 125 in Ohio would delay environmental clean up, lead to higher electric bills for many Ohio consumers and businesses, and adversely affect coal mining areas of eastern Kentucky and southern West Virginia. EPA doubts that Congress ever wanted Section 125 to be interpreted to help one segment of a depressed market gain unfair advantage of another depressed sector.

Congress may soon reexamine the statutory requirements from which this dilemma arises. However, the problem posed here may occur whenever sound environmental policies bear disproportionately on a particular group or region.

EPA believes that in such cases there should be a choice besides simply allowing the disruption to occur or interfering with the workings of a particular market to reduce an economic or unemployment impact. One such third alternative might be a program of adjustment assistance. Congress provides special assistance to workers who lose their jobs due to socially beneficial free trade policies. There are no comparable benefits to workers laid off due to socially beneficial pollution control requirements.

This lack of assistance creates a social cost through the loss of skills and labor which are not helped to find alternative employment. It also makes it harder for the economy to adjust to change. EPA therefore believes that the alternative of providing some form of adjustment assistance deserves serious Congressional consideration.

(Sec. 125 of the Clean Air Act as amended August 7, 1977, 42 U.S.C. 7425)

Issued in Washington, D.C. on January 26, 1981.

Dated: January 16, 1981.

Barbara Blum,

Acting Administrator.

Appendix A

Estimated Decreases in Ohio Coal Demand and Ohio Mining Employment Related To Power Plants Potentially Subject To Section 125 Actions, 1980 as Compared To 1977

Ohio power plant potentially subject to sec. 125	Estimate decrease in tonnage (in 10^3 tons)[1]	Estimated decrease in mining jobs[2]
Cleveland Elec. Illum. Co.:		
Avon Lake	780	220
Eastlake	400	150
Subtotal	1,180	370
Toledo Edison:		
Acme	240	50
Bay Shore	1,160	560
Subtotal	1,400	610
Ohio Edison:		
Sammis	1,450	880
Edgewater	20	30
Subtotal	1,47 0	910
Total	4,050	1,890

[1] The coal curtailment data was obtained from Ohio utilities as responses to letters of inquiry sent under Section 114 of the Clean Air Act, and from Ohio State Implementation Plan submissions and other data provided to EPA. Assumptions of the analysis are described in the text.

[2] See appendix B, footnote 2 for procedure and ssumptions used by EPA in estmating decreases in mining jobs.

Appendix B

Projected Statewide and Southeastern Ohio Employment and Economic Impacts of Fuel Switching by Certain Ohio Power Plants Due To Compliance With the Sulfur Dioxide Emissions Limitations of the Ohio SIP

	Statewide	23 County southeastern Ohio area
Number of coal mining jobs (1977)[1]	15,200	(4)
Ohio coal mining jobs lost by 1980 due to Ohio SO_2 Plan[2]	1,890	(4)
Total jobs lost in mining and non-mining sectors—including coal mine supply industries and industries related to household spending[3]	4,725–5,480	4,252–4,915
Total annual wages lost (millions)[5]	$77–$90	$64–$70
Miners wages lost (millions)	$32	(4)
All other wages lost (millions)	$45–$58	$32–$38
Total unemployment benefit payments (millions)[5]	$12.8–$14.6	$11.7–$13.3
Miners benefit payments (millions)	$6.0	(4)
All other benefit payments (millions)	$6.8–$8.6	$5.7–$7.3
Total annual loss in gross state product (millions)[3] (<0.2 percent)	$135	

[1] Ohio coal mine employment data were obtained from the Department of Industrial Relations, Division of Mines Annual Report, 1977.

[2] This figure is based on the loss of 4.05 million tons of annual production as indicated in Appendix A. The projected coal mine unemployment data were developed by tracing individual utility coal curtailments to expected employment losses at supplying mines from information provided by the Ohio utilities and Ohio coal mine operators. Where this was not possible, employment impacts were estimated by analysis of coal mine employment and production data found in the 1977 Division of Mines Report.

[3] Job losses in the non-mining sector and impacts in the Ohio gross annual product were estimated by using Department of Commerce RIMS and Department of Agriculture RIOMS econometric models. The annual Ohio gross state product is taken as $100–$110 billion.

[4] The data for the 23 county Southeastern Ohio area are taken to be equivalent to the state-wide data.

[5] Wage loss and unemployment benefit data were obtained from the Ohio Bureau of Employment Services.

Appendix C

Projected Statewide and Southeastern Ohio Coal Curtailment and Unemployment Impacts of Fuel Switching by Ohio Power Plants

	Statewide	23 County southeastern Ohio area
Total labor force[1]	5,021,000	681,000
Present unemployment rate (percent)	9.3	(3)
Coal curtailment due to fuel switching for compliance purposes (million tons per year)	4.05	(4)
Coal mining jobs lost by 1980	1,890	(4)
Total jobs lost by 1980	4,725–5,480	4,252–4,915
Percent total labor force affected	0.1	0.6

[1] U.S. Department of Labor, December 1980 data.

[2] Estimated using input/output employment multipliers. Range reflects uncertainty in the extent of reduced household spending of unemployed miners.

[3] Present unemployment rate for the 23 county southeastern Ohio area is not known.

[4] The data for the 23 county southeastern Ohio area are taken to be equivalent to the state-wide data.

[FR Doc. 81–2587 Filed 1–23–81; 8:45 am]

BILLING CODE 6560–28–M

[WH-FRL 1725-4]

Petition To Remove n-Butyl Benzyl Phthalate from the List of Toxic Pollutants under Section 307(a)(1) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment on a petition from Monsanto Company (Monsanto) to delete *n*-butyl benzyl phthalate (BBP) from the list of toxic pollutants under Section 307(a)(1) of the Clean Water Act.

SUMMARY: This action notices receipt of and requests comments on a petition (and supporting data) from Monsanto to remove the phthalate ester, BBP, from the Section 307(a)(1) toxic pollutant list. The EPA is also requesting additional information on BBP relating to its toxicity, persistence (including its mobility and degradability in water), bioconcentration, bioaccumulation, or biomagnification and octanol/water partition coefficient. Information is also requested on the extent of point source discharges, qualitative or quantitative determinations in industrial and municipal wastewater effluents, ambient water, benthic sediments, fish and other aquatic life and any other data relating to the potential for human, aquatic or wildlife exposure. EPA will consider all comments and data received in determining the listing status of BBP. EPA will publish its decision to either retain BBP on the toxic pollutant list or delete BBP from the list in a future Federal Register Notice.

DATES: Public comments on the petition and additional information will be received on or before March 27, 1981.

FOR SUBMISSION OF COMMENTS AND INFORMATION CONTACT:

Jacqueline V. Carr, Criteria and Standards Division (WH–585), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 245–3036.

SUPPLEMENTARY INFORMATION: On November 20, 1980, Monsanto petitioned the EPA to remove BBP from the toxic pollutant list. Monsanto proposed the removal of this chemical from the categorical listing "phthalate esters" under Section 307(a)(1) of the Clean Water Act pursuant to the EPA guidance document, "Guidance on Factors to be Addressed in Petitions to Revise The Toxic Pollutant List" (44 FR 18279, March 27, 1979). In support of its petition, Monsanto evaluated the information factors present in the EPA guidance document. Monsanto asserts that "data and findings based on these information factors and presented in the attached petition show that *n*-butyl benzyl phthalate (BBP) is not a "toxic" pollutant as intended by Congress. Furthermore, these data and findings lead Monsanto Company to conclude that removal of *n*-butyl benzyl phthalate from the Section 307(a) toxic pollutant list will not adversely affect water quality, nor compromise adequate control over discharges."

EPA hereby publishes Monsanto's petition to remove BBP from the list of toxic pollutants along with supporting data furnished by Monsanto (Appendix A).

Request for Additional Information

In revising the toxic pollutant list, the Clean Water Act directs the Administrator to take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organsims, and the nature and extent of the effect of the toxic pollutant on such organsims.

EPA requests additional information on the fate and toxicity of BBP in the aquatic environment for the assessment of these statutory factors. EPA requests information on BBP relating to its toxicity to aquatic life and humans, persistence (including its mobility and degradability in water), bioconcentration, bioaccumulation, or biomagnification and the octanol/water partition coefficient. Information is also requested on the extent of point source discharges qualitative or quantitative determinations in effluents, ambient water, benthic sediments, fish and other aquatic life, and other data relating to the potential for human, aquatic, or wildlife exposure.

Dated: January 15, 1981.

Eckarot Beck,

Assistant Administrator for Water and Waste Management.

Appendix A

State of Missouri, County of St. Louis, before the United States Environmental Protection Agency.

In the matter of the petition of MONSANTO COMPANY for deletion of *n*-Butyl Benzyl Phthalate from the List of Toxic Pollutants in Section 307 of the Federal Water Pollution Control Act, as amended.

Petition for Deletion

Comes now, Monsanto Company, a Delaware corporation, and hereby submits its petition to the Administrator of the Environmental Protection Agency ("Administrator") for deletion of *n*-butyl benzyl phthalate from the list of toxic pollutants set forth by the Administrator pursuant to Section 307(a)(1) of the Federal Water Pollution Control Act, as amended ("the Act").

Monsanto Company is a manufacturer of chemicals and related products. Among the chemicals produced by Monsanto Company are several phthalate esters, including *n*-butyl benzyl phthalate.

Section 307(a)(1) of the Act establishes a toxic pollutant list. Sixty-five compounds or categories of compounds are included at present on this list. "Phthalate esters" is listed as a single entry. The Environmental Protection Agency (EPA) has listed specific phthalate esters for purposes of administering the Act. These are: dimethyl phthalate, diethyl phthalate, *n*-butyl phthalate, di-*n*-butyl benzyl phthalate, di-2-ethylhexyl phthalate and di-*n*-octyl phthalate.

Section 307(a)(1) of the Act provides for additions to or deletions from the list at the discretion of the Administrator, taking into account the ". . . toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms." On March 27, 1979, EPA published a guidance notice (44 FR 18279) regarding changes to the toxic pollutant list. Specific information factors were enumerated therein for consideration in any such petitions, and this petition addresses each information factor.

Monsanto Company hereby petitions the Administrator to delete the compound *n*-butyl benzyl phthalate, hereinafter "butyl benzyl phthalate" or "BBP," from the list of toxic pollutants under Section 307(a)(1) of the Act.

Monsanto Company has carefully evaluated each of the information factors listed by EPA and offers the following data and interpretation in support of the request specified in this petition.

I. Environmental Summary

Alkyl phthalates as a class of chemicals were placed on the toxic pollutant list and were singled out by the Interagency Testing Committee for attention largely because of concern over environmental fate and effects. The limited amount of data on alkyl phthalates prompted this concern. The kinds of data which were available and which brought regulatory attention to alkyl phthalates included, for some phthalates, relatively slow environmental degradation, chronic toxicity to *Daphnia magna*, environmental concentrations near reported chronic toxicity effect levels, and bioconcentration.

While there remains, at present, a relative dearth of data on certain other members of the alkyl phthalate family, an intensive research program on butyl benzyl phthalate has provided data which significantly distinguish BBP from other family members, especially in terms of environmental degradation rates, bioconcentration, and magnitude of the safety factor between chronic toxicity effect levels and environmental concentrations. This is, BBP undergoes rapid and complete microbial degradation in less than four days, shows only moderate chronic toxicity of 0.2 mg/l to 0.5 mg/l to fish and invertebrates, has environmental concentrations 1000-fold less than chronic effect levels, and is not biomagnified up the food chain.

II. Aquatic Hazard Evaluation of Butyl Benzyl Phthalate (BBP)

A. Introduction

As a result of cooperation between government, industry and university scientists, a number of recent publications have outlined the essential components of scientifically valid aquatic hazard evaluation (*1, 2, 3, 4*). The accepted approach is to compare the toxicological data, of which the chronic data are of prime importance, with the exposure data to derive a safety factor. The extent of the environmental data base needed to reach a hazard judgment is influenced most heavily by persistence; acute and chronic toxicity; physical/chemical properties such as water solubility, octanol water partitioning and adsorption; and production volume and use pattern.

This general approach to aquatic hazard evaluation is being practiced by the Pesticide Registration Branch of the EPA. They currently utilize the criteria developed and published by the American Institute of Biological Sciences (AIBS)(1). Persistence is one of the criteria recognized as important in evaluating the potential for continuous exposure and hazard. When a chemical has a half life in water of less than four days and a safety factor relative to acute toxicity of greater than 10, it "strongly indicates a low probability of chronic hazard to the test species" (1). Furthermore, the AIBS document states that when the safety factor for acute toxicity and exposure is greater than 100, "further testing is generally not indicated except in the case of some cumulative toxins." The safety factor for BBP is greater than 1000, and it is not a cumulative toxin.

Every chemical reviewed for safety must be evaluated by a number of criteria. Butyl benzyl phthalate, when evaluated by today's standards of toxicity, persistence and exposure, does not fall into the class of chemicals which should be considered a threat to the environment.

B. Laboratory Degradability

Butyl benzyl phthalate is readily biodegraded in ambient waters and in activated sludge systems. The degradation is to complete mineralization, with no formation of refractory residues and no inhibition of microbial growth rate. A summary of persistence data is given in Table 1. A detailed discussion of these data and the work from which they are derived is found in Reference 5.

Table 1. Environmental Persistence of Butyl Benzyl Phthalate (Reference 5)

[Extent of degradation (percent)]

	Primary[a]	Ultimate[b]	Time, days	Half-life, days
Biodegradation:				
Activated sludge	98-99		1	
CO_2 evolution—aerobic		96	28	
Gas production—anaerobic		<10	28	
River water	100		9	2
Lake water microcosm	>95		7	<4
Lake water microcosm		51-68	28	
Photodegradation	<5		28	>100
Chemical degradation (hydrolysis)	<5		28	>100

[a] Disappearance of BBP as measured by gas chromatography.

[b] Mineralization under aerobic conditions to CO_2; under anaerobic conditions to H_2, CH_4, and CO_2.

It can be concluded from these data that the primary route of environmental loss will be from microbial enzymatic degradation, with minimal photo or chemical degradation. Furthermore, the rate of microbial degradation (half life <4 days) suggests that the environment assimilates BBP very quickly, so that chronic toxicity is not of concern. In fact, the AIBS criteria (1) suggest chronic toxicity testing may not be needed when a chemical is so rapidly degraded.

C. Environmental Monitoring and Use Patterns

Butyl benzyl phthalate is made commercially in the United States exclusively by Monsanto Company under the trade name Santicizer® 160. The compound is manufactured at two sites, Bridgeport, New Jersey, and Sauget, Illinois. A total of about 100 million pounds per year is produced. The compound is used as a plasticizer in the manufacture of polyvinyl chloride (PVC) products such as flooring materials, wall coverings, shower curtains, shoes, luggage

and food wrap film. It finds some application in plasticizing resins other than PVC, namely polyvinyl acetate, cellulosics and acrylics. These other resin systems are used in adhesives, sealants and paints.

Environmental monitoring for BBP has been conducted in the receiving waters at our production facilities and in surface waters from a number of sites around the United States. Samples of water, sediments and fish tissues were collected and analyzed for BBP. The EPA also conducted analysis of water samples in their own survey (6) with additional data available from Keith and Telliard (7), Sheldon and Hites (8) and STORET.

1. Surface Waters

Environmental monitoring of selected surface waters by Monsanto (5) has shown butyl benzyl phthalate to be present in trace amounts in 66% of the 50 water samples, 25% of the 28 sediment samples and essentially none (3%) of the 62 fish samples (9). The geometric mean concentrations in water and sediments were 0.00035 mg/l and 0.136 mg/kg, respectively. Ninety-seven percent of the fish samples were below the detection limit of 1 mg/kg, with just two samples higher. Contamination through handling was suspected as the source of BBP in these two samples for which replicates showed no BBP.

It should be noted further that these low environmental concentrations of BBP exist in the face of a ten-year history of ca. 100 million lbs./yr. production of the ester. An environmental "surprise" in the form of a sudden upward surge in water concentrations of the ester is highly unlikely.

2. Bridgeport, New Jersey

At the Bridgeport production facility, which includes other chemical processing units, the total wastewater is subjected to secondary, activated sludge treatment. Monitoring done in November 1977 by the EPA showed butyl benzyl phthalate entering the treatment plant at a concentration greater than 2.5 mg/l and leaving it at less than 0.005 mg/l. Subsequent sampling by Monsanto personnel in March, 1978 and April, 1979 showed influent levels of 4.98 mg/l and 7.50 mg/l with effluent levels of 0.0019 mg/l and 0.0015 mg/l for the corresponding periods. This high percentage removal was probably due to combined adsorption and microbial degradation. Butyl benzyl phthalate concentration in the sludge from this unit in April, 1979 was 6.6 mg/kg, on a dry weight basis. This sludge is deposited in a permitted landfill on the premises of the Bridgeport facility.

A monitoring study (8) of the Delaware River, into which the Bridgeport treatment plant discharges, showed butyl benzyl phthalate present at 0.0004–0.0010 mg/l (winter) and 0.0003 mg/l (summer). The authors reported no concentration maxima along 54 miles of river from Trenton, New Jersey to Marcus Hook, Pennsylvania. The Bridgeport outfall is ca. 2 miles upstream from Marcus Hook. The study supports the data generated by Monsanto scientists (5) in that the levels reported in the Delaware River agree well with those found in other surface waters.

An earlier report (6) found no butyl benzyl phthalate immediately upstream, downstream or near the Bridgeport outfall.

It is apparent that the Bridgeport facility makes no significant contribution to the environmental burden of the ester in the Delaware River.

3. Sauget, Illinois

At the relatively new Sauget, Illinois facility, effluent from the butyl benzyl phthalate plant is combined with those from other chemical processes and with domestic and other industrial waste waters from the municipality of Sauget and is given primary physical-chemical treatment at the municipal treatment works. Some removal occurs in this works, and samples of Mississippi River water taken immediately below the outfall showed 0.0006–0.031 mg/l of the ester (9). Only one of three sediment samples contained butyl benzyl phthalate (9).

While the Sauget plant effluent is not currently receiving biological treatment, such a treatment works is now in the pilot plant and design phase with completion scheduled for July 1983. At that time, the Sauget unit's contribution of butyl benzyl phthalate to the Mississippi River should be about as inconsequential as the Bridgeport unit's contribution to the Delaware River.

4. Other Point Source Discharges

Other point source discharges may result from butyl benzyl phthalate's use as a plasticizer. As part of the process of forming plasticized, plastic products, butyl benzyl phthalate and a resin are mixed at high temperature. Some of the ester volatilizes, and the vapors are, in many cases, cooled by contact with water. The maximum concentration one would expect in them is the solubility limit value of 2.9 mg/l.

Butyl benzyl phthalate has been reported (7) in 8.5% of the effluent samples taken from 32 different industrial categories defined by EPA as of August 31, 1978. The compound was present in 13 of the 32 industrial categories' effluents. However, Tygon® tubing used to sample these effluents is plasticized with phthalate esters, so these findings may be erroneously high. Information in the Environmental Protection Agency's STORET Data System, especailly the older data, should also be viewed with some skepticism in estimating levels of BBP in surface waters because of such sample contamination and because of contribution from laboratory background.

5. Analytical Capability

Analytical methods exist which permit accurate measurement of butyl benzyl phthalate concentrations in environmental samples at well below measured effect levels (5). The methods involve extraction with hexane (water samples) or methylene chloride (sediment, fish samples), followed by filtration through $NaCl/Na_2SO_4$, and then gas chromatographic analysis with flame ionization or electron capture detectors. In monitoring studies, the gas chromatograph was used in conjunction with a mass spectrometer operated in the Selected Ion Monitoring mode using the selected ion at m/e=149. Detection limits are 0.0001–0.0002 mg/l (water), 0.1 mg/kg (sediment) and 1 mg/kg (fish). Percent recoveries in spiked samples at these levels are 104.5% (water), 92.3% (sediment) and 38% (fish).

6. Conclusions

A number of conclusions can be reached based upon the data available from field monitoring studies:

- Microbial degradation and adsorption on solids in waste treatment facilities results in rapid removal of BBP from 2–8 mg/l in the influent to about 0.002 mg/l in the effluent (99.96–99.98% removal).
- The geometric mean of BBP concentrations in representative natural waters and sediments are 0.00035 mg/l and 0.136 mg/kg, respectively.
- Fish tissues are below the detection limit of 1 mg/kg in BBP, suggesting no food chain biomagnification.

The very low concentrations of BBP found in surface waters appear to reflect an equilibrium between the rates of input and degradation.

D. Chronic Toxicity

Knowledge of a chemical's chronic toxicity is now recognized as essential to evaluating the potential hazard of that chemical (1, 2, 3, 4). The maximum allowable toxicant concentration (MATC) is the accepted expression for the no-effect and effect concentrations. The chronic toxicity of BBP was measured in a 14-day time independent test with fathead minnows, a 30-day fathead embryo-larval study and a 42-day, two-generation chronic *Daphnia magna* study. The time independent study clearly sholwed that BBP is not an accumulative toxin. The 4 and 14 day LC_{50} values are virtually identical (Table 2). Results of the fathead embryo-larval study and the *Daphnia magna* study confirm this finding. The lowest observable effects on the fish and daphnids were 0.36 mg/l and 0.76 mg/l, respectively (Table 2). The MATC's presented in Table 2 were derived consistent with the methodology described at 43 Federal Register 21506.

Table 2.—*Time-Independent and Chronic Toxicity of BBP to Fathead Minnows and Daphnia Magna (5)*

Species	Test	Result[a]
Fathead minnows.	Time-independent, flow-through[b], 4 days.	LC_{50}=2.32 (1.39–3.23) mg/l.
	14 days.....	LC_{50}=2.35 (1.34–3.77) mg/l.
	30-day Embryo-larval.	MATC[c]=0.14–0.38 mg/l (growth rate).
Daphnia magna.	2 Generation chronic.	MATC[d]=0.26–0.76 mg/l (reproduction).

[a]95% Confidence Interval (C.I).
[b]Lowest effect level—1.08 mg/l.
[c]No effect at any concentration below 0.38±0.016 mg/l. Effect: reduction in growth. Hatchability and survival were normal.
[d]No effect on survival.

E. Hazard Evaluation

Comparison of the 0.00035 mg/l average environmental water concentration to the geometric mean of the *Daphnia* and fathead minnow MATC concentrations of 0.26–0.76 mg/l and 0.14–0.36 mg/l respectively,

indicates a safety margin of approximately 1000 (Figure 1). Comparison of the acute toxicity to exposure indicates a safety factor of approximately 5000. Worst case exposures below point source discharges demonstrate a safety factor of two orders of magnitude.

These results show that BBP does not pose a threat to aquatic organisms as a result of chronic exposure to environmental concentrations, and that bioaccumulation in fish is not significant based upon field sampling.

F. Additional Environmental Fate Data

1. Mobility

The mobility data below show butyl benzyl phthalate to have a very low vapor pressure, and hence a low tendency to partition from consumer goods or surface waters into the atmosphere. The compound's low aqueous solubility and its soil adsorption coefficient indicate a very low rate of transfer to aqueous systems from plasticized articles, and a tendency for ester dissolved in water to partition to sedimentary matter.

Mobility Properties of Butyl Benzyl Phthalate (5)

Vapor Pressure:	
20° C	3.6×10^{-6} mm Hg.
200° C	1.9 mm Hg.
Aqueous Solubility	2.9±1.2 mg/l.
Soil Adsorption Coefficient*	68-350.

*Equilibrium conc. in soil÷equilibrium conc. in water.

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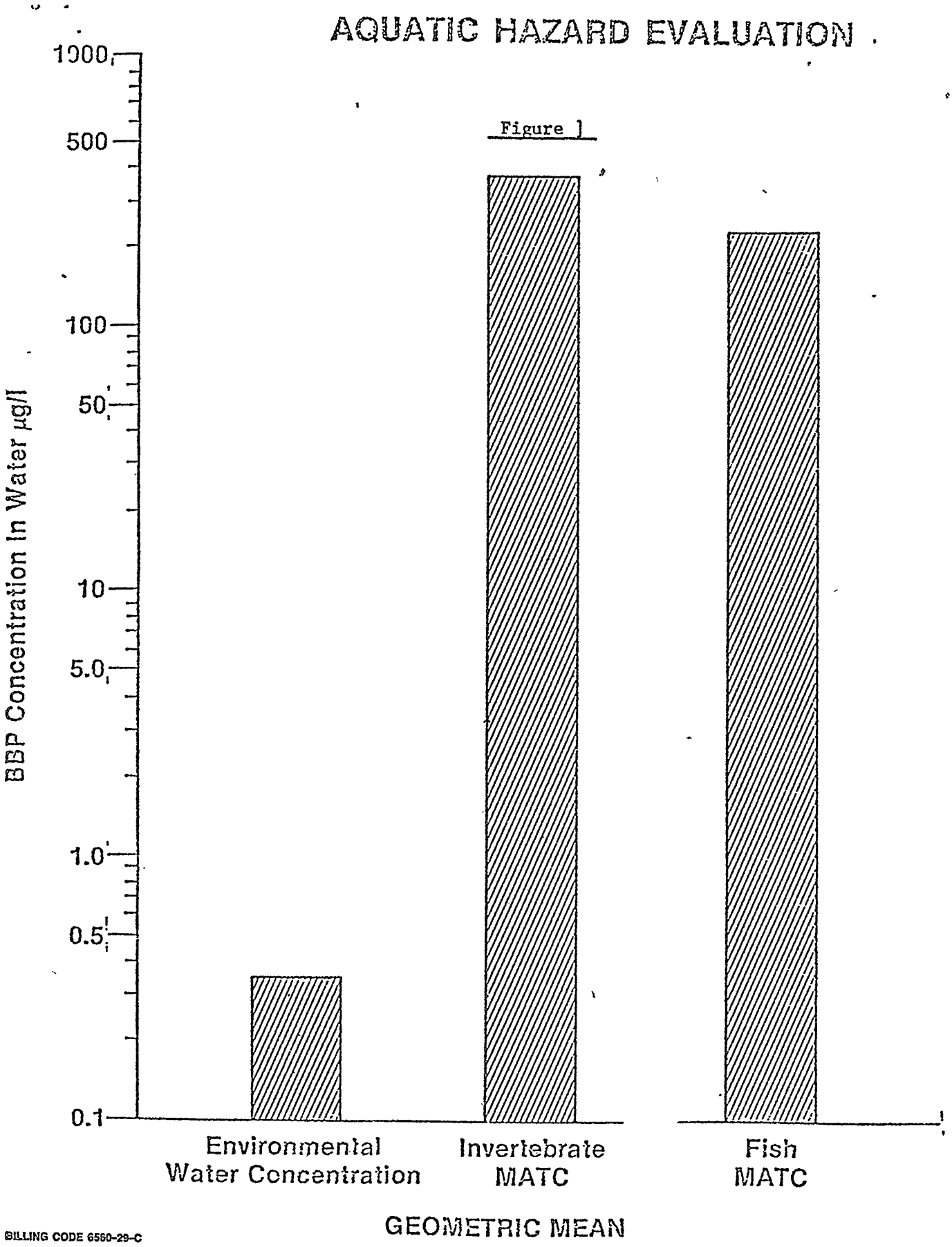

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2. Bioconcentration

The bioconcentration potential of butyl benzyl phthalate was estimated in octanol/water partition studies (5), in an EPA-sponsored study by Bionomics (10), and in a Monsanto 17-day uptake, 21-day clearance study using ^{14}C BBP and bluegill (11). The bioconcentration data are summarized below.

Octanol/water partition coefficient (5), $5.9 \pm 4.3 \times 10^4$

Calculated bioconcentration factor (5), $510 + 220$

Bluegill—

Bioconcentration factor:
Whole fish (11), 188
Whole fish (10), 663
Muscle (11), 29
Half life (11):
Whole fish, 0.91 days
Muscle, 1.14 days

The bluegill data (10, 11) are based upon ^{14}C data only. It is quite likely that analysis of fish tissues would show most of the ^{14}C residues not to be intact BBP but a metabolite which is rapidly eliminated. Mammalian metabolism data support this hypothesis. The conclusion that fish readily metabolize BBP is also supported by the analysis of real-world fish tissues. That is, no BBP residues were found above the detection limit, suggesting that BBP is not magnified up the food chain.

G. Additional Toxicity Data

1. Acute Toxicity of Fish/Invertebrates

The toxicity of BBP in acute lethality tests with invertebrates and fish is given below (5).

Species	EC_{50} or LC_{50} (95% C.I.) mg/l	No effect Concentration mg/l
Daphnia magna	3.7 (3.0–4.6)	1.0
Mysid shrimp	0.9 (0.7–1.2)	0.4
Fathead minnow	5.3 (4.3–6.5)	2.2
Bluegill	1.7 (1.0–2.8)	0.4
Rainbow trout	3.3 (2.9–3.9)	<0.4
Sheesphead minnow	3.0 (2.4–3.9)	1.0

Additional acute lethality tests were conducted to determine the interactive effects of water hardness, fulvic acids, and other alkyl phthalates on aquatic organisms. Results of these tests appear in the following table.

Species	EC_{50} or LC_{50} mg/l	95% C.I. mg/l
Fathead minnows	5.3[a]	4.3–6.5
Fathead minnows	2.1[b]	1.7–2.5
Daphnia magna	3.7[c]	3.0–4.6
Daphnia magna	1.9[d]	1.5–2.4
Daphnia magna	2.4[e]	1.5–3.9
Daphnia magna	3.7[c]	3.0–4.6
Daphnia magna	2.0[f]	1.2–3.4
Daphnia magna	1.0[g]	0.7–1.3

a. 160 mg/l hardness.
b. 40 mg/l hardness.
c. butyl benzyl phthalate = well water only.
d. butyl benzyl phthalate = purchased fulvic acid (12).
e. butyl benzyl phthalate = natural fulvic acid (12).
f. di-2-ethylhexyl phthalate = well water.
g. di-2-ethylhexyl phthalate/butyl benzyl phthalate 1:1 (w/w)(13).

2. Algal Growth Inhibition

The concentrations of BBP that effected the growth of algae are given on the following page.

Species	EC_{50} (95% C.I.) mg/l	No effect concentration mg/l
Algae:		
Microcystis	1000	560
Dunaliella	1.0 (0.2–5)	0.3
Navicula	0.6 (0.3–2)	0.1
Skeletonema	0.6 (0.3–2)	0.1
Selcnastrum	0.4 (0.2–1)	0.1

These additional data on the toxicity of BBP support the previously developed hazard evaluation based on chronic toxicity and measured exposure concentrations. There does not seem to be any unusual species response for freshwater or salt water invertebrates and fishes. Algae do not seem to be much different than other biota with the exception of *Microcystis* which seem much more tolerant of BBP. There were no notable synergistic effects for the parameters tested.

III. Toxicity of Butyl Benzyl Phthalate (BBP) to Mammals

A. Introduction

A series of toxicology studies has been undertaken by Monsanto Company to evaluate the potential toxicity of BBP to mammals. Additional toxicology studies on this compound have also appeared in the literature. An overall review and evaluation of these data follows:

B. Assessment of Safety

Butyl benzyl phthalate is relative non-toxic when ingested, inhaled, or absorbed through the skin of laboratory animals. After oral administration, it is readily metabolized and excreted and does not accumulate in body tissue. Testing by Monsanto has provided no evidence to suggest that BBP is neurotoxic, teratogenic, mutagenic, or carcinogenic.

Very high oral doses of BBP will induce liver hypertrophy. However, these livers have a normal appearance when examined microscopically.

When BBP was given by gavage for two weeks to immature Sprague-Dawley rats (1600, 480, 160 mg/kg/day) and to immature Wistar rats (1600, 480 mg/kg/day), testicular atrophy was observed in some animals. In a more comprehensive 90-day feeding study with immature Wistar rats fed BBP at a concentration of 12,000 ppm (equivalent to 900–1000 mg/kg/day) in the diet, no testicular atrophy was observed. The no-effect level was at least 900–1000 mg/kg/day to Wistar rats. A 90-day feeding study in beagle dogs at levels up to 50,000 ppm (equivalent to 1250 mg/kg/day) in the diet showed no significant gross or microscopic pathologic changes in testes. Since testicular lesions were not observed in dogs or in the 90-day study of rats at slightly lower dosages, the biological significance to man is doubtful.

In the study where testicular lesions were reported, the no-effect level was 160 mg/kg to Sprague-Dawley rats. Since surface waters contain less than 0.001 mg/l of BBP (geometric mean 0.00035 mg/l), a 70-kg adult would have to consume 11,200,000 liters of water a day to ingest an amount of BBP equivalent to this no-effect level. This calculates out to a very substantial safety factor of about 560,000. Actual drinking water undoubtedly contains lower levels of BBP, resulting in an even larger safety factor.

C. Summary of Toxicity Data

1. Acute Toxicity Studies

The acute oral LD_{50} of butyl benzyl phthalate in rats is 20,400 mg/kg. Thus, it is considered to be practically non-toxic by ingestion (14).

Instillation of 0.1 ml of undiluted BBP into the conjunctival sac of the rabbit eye produced a slight degree of irritation which subsided within 48 hours (14).

Essentially no irritation resulted after 0.5 milliliters of BBP was held in continuous 24-hour contact with intact and abraded rabbit skin (14). The dermal LD_{50} was found to be greater than 10,000 mg/kg when applied to rabbit skin for 24 hours (14). When injected intradermally into rabbits, BBP induced a moderate degree of extravasation (15).

When injected into the intraperitoneal cavity of mice, the LD_{50} of BBP was reported to be 3160 mg/kg (15).

Administration of BBP by the intravenous route (350 mg/kg) stimulated respiration but did not increase blood pressure in anesthetized rabbits (15).

BBP was tested on 200 human subjects for its sensitization potential (16). After a 48-hour dermal contact to BBP, volunteers were given a challenge dose 15 days after the initial application. BBP induced a mild degree of primary irritation in 4 of 200 volunteers. No positive sensitization reactions were reported in any test subjects.

In a subsequent study (17), butyl benzyl phthalate was tested on another 200 volunteers for its potential as a primary skin irritant, fatiguing agent and/or sensitizer. Following three 24-hr. patch exposures per week for five weeks, exposure was suspended for two weeks. The volunteers were then given a 24-hr. challenge exposure by patch, and the skin examined for signs of sensitization. No signs of irritation or sensitization were noted in either the initial series of exposures or the challenge exposure.

2. Subacute Toxicity Studies

a. *Oral Route.* Sprague-Dawley rats were fed diets containing BBP at concentrations of 5000; 15,000; and 20,000 ppm (equivalent to 400–1500 mg/kg/day) for 90 days (18). The only toxicological effect reported was an increase in the liver to body weight ratios in animals in the mid and high dosage groups. No treatment related lesions were observed in the organs of test animals examined microscopically. The no-effect level in this study was 5000 ppm (ca. 400 mg/kg/day).

The preceding study was conducted in 1961. Since it was uncertain from this study if 1500 mg/kg was a maximum tolerated dose, a four-week pilot feeding study was undertaken (19). In this study, the concentration of BBP in the diet was adjusted to yield dosage levels of 500 to 3000 mg/kg. No dose related mortality was observed

during the course of the study. High dosage (3000 mg/kg) male animals exhibited significant reductions in food consumption and body weight. Toxic signs were observed in male and female animals administered 2000 and 3000 mg/kg BBP. These reactions included "red discharge around the nostrils, hypoactivity and inhibited movement of and loss of coordination of the posterior appendages." At the end of the study, all animals were discarded with autopsy.

At a later date, a repeat four-week feeding study was initiated to more fully evaluate the previous findings of coordination loss in the hind limbs of animals given large doses of BBP (20). The intent of this investigation was to ascertain whether the effects observed were reversible. Tissues were examined microscopically to determine if there was a morphological basis for the loss of coordination in hind limbs. Diets were adjusted weekly to yield dosage levels of 500 to 4000 mg/kg. Unlike the previous study, there was significant mortality in male animals at dosages above 1500 mg/kg. At these dosages (2000 to 4000 mg/kg) animals exhibited "emaciation, hemorrhagic discharge from nostrils, blue discoloration and/or inflammation of the extremities and stiffness of the posterior body parts."

Animals that died on test or were sacrificed at four weeks were found to have hemorrhages in a variety of organs (e.g., brain, spinal cord, reproductive organs, peripheral nerve, skeletal muscle, bladder, etc.) upon gross and microscopic examination. These observations were primarily limited to male animals. Those that survived the dosing regimen were placed on control diets for 4 to 5 weeks. All toxic signs disappeared shortly thereafter and few lesions were noted at autopsy (8 weeks).

Specimens of spinal cord and peripheral nerve were obtained from animals that exhibited "stiffness in posterior appendages" and were stained for myelin by the Weil-Weigert method (21). There was no evidence of compound related degenerative changes in myelin for animals that died on test or were allowed to recover.

In another study (22), immature male Sprague-Dawley rats were administered BBP at daily dosages of 160, 480, and 1600 mg/kg in the diet for 14 days. Immature Wistar strain rats were also given BBP at daily dosages of 480 and 1600 mg/kg for 14 days.

Moderate increases in liver weight were observed in the high dosage animals. However, the livers of all test animals appeared histologically normal. Degenerative testicular changes were noted histologically in high dosage Wistar and high and mid dosage Sprague-Dawley rats. Thus, in this study the no-effect levels for BBP in Sprague-Dawley and Wistar rats were 160 mg/kg and 480 mg/kg, respectively.

Subsequent to this study, immature male Wistar rats were fed diets containing BBP at concentrations of 2000, 5000; and 12,000 ppm (equivalent to 160–1000 mg/kg) for 90 days (23). No remarkable testicular changes were noted in animals examined microscopically at 2, 6, and 13 weeks (24). Because of the apparent variability between strains of rats, the significance of the reported findings of testicular degeneration is uncertain.

Dogs were fed butyl benzyl phthalate in the diet at concentrations of 10,000, 20,000, and 50,000 ppm (equivalent to 250, 500, and 1250 mg/kg/day) for 90 days (25). The highest dietary concentration of BBP was unpalatable, resulting in malnutrition. Therefore, from day 40 until the conclusion of the study animals in this group were given their dosage of BBP by capsule. No differences between control and test animals were observed for the following parameters: mortality, hematology, urinalysis, liver and kidney function and gross and microscopic pathologic findings (including testes). Since body weights of high dosage animals were decreased relative to controls, the no-effect level in this study was 20,000 ppm.

b. *Intraperitoneal Route.* Mice were given intraperitoneal injections of BBP at daily dosages of 500 mg/kg for six weeks (15). Peritonitis was observed frequently in the treated mice as phthalates are quite irritating when given by this route of administration. In contrast to oral feeding studies in rats, intraperitoneal injection of BBP at this high dosage induced periportal inflammation of the liver in test animals. However, the relevance of this finding to a safety evaluation of BBP in drinking water is questionable since this is not the route of exposure which would be encountered.

c. *Inhalation Route.* Rats were exposed to varying concentrations (50, 150, and 500 mg/m^3) of aerosolized BBP for six hours/day, five days a week for four weeks (26). No deaths or untoward reactions were observed during the investigational period. Liver weights and liver to brain weight ratios were elevated in high dosage female rats. Microscopically, the livers from these animals appeared normal. No other toxicological effects were observed in this study.

3. Additional Toxicity Studies

a. *Metabolic Rate.* Metabolism studies after oral administration to the rat have shown that butyl benzyl phthalate is readily hydrolyzed in the gastrointestinal tract and the liver to the corresponding monobutyl or benzyl ester (23). The phthalate monoesters are then rapidly eliminated in the excreta (80% urine, 20% feces). There was no significant accumulation of BBP or its metabolites in body tissues.

b. *Neurotoxicity.* In an early study of the toxicity of several plasticizers, BBP was reported to have induced demyelination in rats (27). According to the authors, oral administration of more than 4000 mg/kg induced mortality in rats within eight days (Subsequent studies have not confirmed the minimum lethal doses reported for BBP and other phthalate plasticizers tested in this study. Other investigators have consistently shown that the acute oral LD_{50} for these materials ranges from 20,000 to 50,000 mg/kg.) Degenerative lesions of the central nervous system were reported in animals that had died and were examined microscopically. No details were provided concerning the histological techniques used.

These lesions have never been reported in subsequent acute, subacute, or chronic toxicity studies where rats have been administered large doses of BBP. In a previous section (Subacute Toxicity Studies: Oral Route) observations of "stiffness in posterior appendages" were described in four-week feeding studies. These animals did not exhibit microscopic changes in nerve tissues and apparently recovered when removed from BBP treatment.

In view of the apparent contradictions, this study was repeated in an attempt to confirm or refute the finding of neurotoxicity. Therefore, adult rats were given a single oral dose (4000 mg/kg) of either BBP or tri-ortho-Cresyl phosphate (TOCP) (28). Eight days after dosing, all rats were sacrificed and sections of brain, spinal cord, and sciatic nerve were examined for signs of myelin degeneration A few animals that received TOCP showed rare myelinated axons undergoing active fiber degeneration in sciatic nerves. Lesions were not observed in animals administered BBP.

In another study aimed at evaluating the neurotoxic potential of BBP, hens were given daily dosages of either BBP (5000 mg/kg) or tri-ortho-tolyl phosphate (TOTP) (500 mg/kg) for three consecutive days (29). Twenty days later this regimen was repeated. Within 11—18 days following dosing, all hens receiving TOTP showed symptoms of neurotoxicity. Histopathological evaluation of the sciatic nerves from these animals revealed evidence of severe axonal degeneration. No evidence of neurotoxicity or degenerative lesions was apparent in hens fed BBP.

In a series of Russian articles, various phthalates, including BBP, have been alleged to induce neuropathies in man as a result of occupational exposure and in animals dosed with various plasticizers.

In the workplace, various neurological disorders are described in workers exposed to aerosolized plasticizers at ambient air levels of 10—66 mg/m^3 (30). No supporting documentation was provided to substantiate these findings. If these neuropathies were real, it would be difficult to ascertain their etiology since no information was provided on worker history or environmental conditions in the plant. Moreover, some workers were exposed to tricresyl phosphate, a known human neutotoxin. This report must be regarded as anecdotal and "many are skeptical of the Soviet reports" since "nobody in the United States is able to confirm such findings" (31).

In animal toxicology studies, several phthalates, including BBP, were administered to rats and mice by various routes of exposure (32, 33). According to the authors, paresis and paralysis of the extremities was observed in animals exposed to BBP and dibutylphthalate by inhalation (chamber concentrations 15.2, 13.4, 8.9 mg/m^3, 4 hrs./day for 2 months). Histopathological changes were reported in nerve cells including demyelinization of peripheral nerves and fibers in the anteriorlateral spinal column. No supporting documentation of these findings was provided, and no details were given concerning the techniques used for histological preparation of nerve tissue, *i.e.* perfusion, staining methods, etc.

These findings have not been reproduced in more recent investigations. In studies at Monsanto's Environmental Health Laboratory, rats were exposed to aerosolized BBP 6 hrs./day, 5 days/week for 1 month and 3 months (34, 35).

In the one-month pilot study, chamber concentrations were 2130, 1020 and 300 mg/m³. Mortality was observed in high level males (3/20) and females (4/20).

Significant body weight reduction was noted in high level animals. In the three-month study, rats were exposed to BBP chamber concentrations of 800, 200 and 50 mg/m³. No dose related changes in mortality or body weights were observed in this study. In neither of these investigations were there observations of paresis, paralysis or other toxic signs indicative of neurological impairment.

Although BBP and other phthalates have been indicted as neurotoxins in Russian articles, these studies are poorly documented and the animal studies cannot be reproduced. Therefore, the credibility of the observations must be questioned.

c. *Teratology.* Pregnant rabbits were administered daily dosages of EBP (3, 10 mg/kg) during the major period (days 6–18) of organogenesis (36). The day prior to parturition, all fetuses were delivered by Caesarean section, and the uterin horns were examined for implantation sites, resorptions, and the number of viable and nonviable fetuses. Fetuses from control and test animals were also examined for soft tissue or skeletal anomalies. For the parameters examined, there was no significant differences between treated and control animals.

Therefore, at the dosages tested, BBP was not embryotoxic or teratogenic in the rabbit.

In a separate study, no congenital malformations or other adverse effects were reported when developing check embryos were inoculated with approximately 50 mg (0.05 ml) of BBP (37).

d. *Mutagenicity.* In a series of mcirobial mutagenicity assays (*Samonella* strains TA 98, TA 100, TA 1535, TA 1537, and TA 1538 with and without activation, and bacterial repair tests with *B. Subtilis* and *E. Coli*, BBP did not induce a mutagenic response in any test system (38, 39, 40).

BBP was also evaluated for mutagenic activity in the mouse lymphoma assay (41). This assay evaluates materials for their ability to induce specific locus forward mutatins in L5178YTK (Thymidine kinase) mouse lymphoma cells. In tests with and without metabolic activation, BBP did not induce mutagenic activity at the TK locus.

e. *Carcinogenicity.* The carcinogenic potential of BBP was evaluated in a pulmonary tumor bioassay in Strain A mice (42). BBP was administered by intraperitoneal injection at three dosage levels (800, 400, and 160 mg/kg). Each dose was given three times a week for a total of 24 injections. Urethane served as a positive control in this study and induced a marked increase in the incidence of pulmonary adenomas. BBP did not induce a significant increase in pulmonary adenomas.

In an earlier study, 20 male and 20 female rats were fed BBP at 50 to 100 ppm in the diet (equivalent to a dosage of 5 mg/kg) for two years (43). The incidence of tumors in rats treated with BBP was comparable to that in historical controls.

The National Cancer Institute recently completed an evaluation of the carcinogenic potential of BBP (48, 49). Rats and mice were fed BBP in the diet at concentrations of 6,000 and 12,000 ppm for 103 weeks. Mean body weights of dosed male rats and mice of both sexes were lower than those of control animals. Administration of BBP was not associated with an increased incidence of any type of tumor among mice of either sex.

After week 14, an increasing number of dosed male rats died as a result of internal hemorrhaging since they were being dosed with greater than the MTD for the material and all surviving male rats were killed at week 29–30. This problem was not encountered in female rats and a sufficient number of animals were at risk for development of late appearing tumors. Although a numerical increase in leukemias of the hematopoetic system was observed in high dosage animals, the authors of the report concluded that BBP was not clearly carcinogenic in female rats.

4. Exposure of Humans via Water and/or Aquatic Foodstuffs

The data from environmental monitoring studies (5, 8, 9) lead to the conclusion that the exposure of humans to butyl benzyl phthalate through drinking water and aquatic foods is at least five orders of magnitude below the no-effect level reported in the BIBRA target organ study (22). These data and the negative mutagenesis (38, 39, 40, 41), teratogensis (36, 37), and carcinogenesis data (42, 43), support the conclusion that butyl benzyl phthalate should not present a significant hazard to human health at observed environmental levels.

IV. Additional Information

A. Projected Production Volume Growth

Current environmental levels of butyl benzyl phthalate are the result of a ten-year average annual production of about 100 million pounds, during a period when wastewater treatment was less sophisticated and widespread than at present. It is extremely unlikely that U.S. production will increase by more than a factor of 2 or 3 over the next 10 to 20 years. Monsanto is the sole domestic producer and has, therefore, an excellent grasp of the growth potential for the market for this material.

B. Congressional Intent

The Clean Water Act, as amended in 1977 and 1978, provides an explicit mechanism for amending the toxic pollutant list. Concerning the list, Section 307(a) states the following (44):

"From time to time thereafter the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from list shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms."

This provision was not included in the Act without due consideration by Congress. A brief review of the legislative history of the 1977 Clean Water Act Amendments makes it clear that Congress intended that EPA continue to evaluate not only possible additions to the list, but also deletions.

The House-Senate Conference Report on the 1977 Clean Water Act Amendment states (45):

"Section 53 of the conference substitute provides the list of toxic pollutants or combinations thereof subject to the Act shall be those listed in Table I of the House Public Works and Transportation Committee Print Numbered 95–30. The Administrator shall publish this list within 30 days after the date of enactment. The Administrator may revise the list and add to or remove from the list any pollutant. It is intended that the test for adding and for removing are the same. It is not intended to be more difficult either to remove pollutants from, or to add pollutants to, the list. A determination of the Administrator to add to or remove a pollutant from the list is final unless it is based on arbitrary and capricious action."

This provision was discussed in some detail on the floor of the Congress. During the House debate on the Conference Report, Congressman Ray Roberts of Texas made the following statement (46):

"It must be recognized that a number of generic pollutants, both organic and inorganic, may well contain individual compounds or subclasses of compounds which are not in fact toxic, or which in fact may not be discharged by any industry or point source in more than trace amounts.

"In implementing this section, it is the intent that EPA will take a realistic approach with respect to classes of pollutants among the listed 65, or classes conceivably to be added by the Administrator under discretion conferred by this legislation.

"Thus, if a compound—or subclass of compounds—on or added to the list, proves upon analysis not to be toxic, it is expected that the Administrator will exercise his discretion and drop it from the list. Thus, there would be no requirement for regulation under Section 307."

During the Senate debate on the same Conference Report, Senator Edmund Muskie of Maine stated the following (47):

"The procedure for modification places specific burdens on the person seeking the modification and it is expected that a considerable level of investment and a considerable period of time will be required to make these showings. The result of these studies will add greatly to the level of knowledge of the impacts of pollutants on the environment. Herein lies an important point.

"It is not acceptable to allege absence of harm solely on the basis of the loss of the pollutant in the environment. The absence of harm test as specified in this bill, including the secondary treatment modification provision, will require the applicant for modification to show the pathway of the pollutant through the environment and its ultimate disposition in the environment. Only in that way can there be real demonstration that the discharge of that pollutant will not interfere with a balanced population of aquatic life."

The language of the Clean Water Act plus this brief review of the Act's legislative history, leads to the following conclusions:

(1) Congress intended that the toxic pollutant list be revised from time to time, and placed specific power to do so in the hands of the Administrator of the EPA.

(2) Congress specifically intended that modifications to the list be a "two-way street"—that is, as additional "toxic" compounds are identified, they should be added to the list, conversely as information is presented to demonstrate that a listed pollutant is not a "toxic" substance, EPA should remove it from the Section 307(a) list.

Monsanto believes that the data and showings contained in this petition, obtained at a substantial investment of resources, demonstrate that butyl benzyl phthalate is not a "toxic pollutant" as that term is used in the Act, and that it should, therefore, be removed from such consideration. Monsanto believes that this petition adequately addresses the criteria required by the Clean Water Act, and further defined in EPA's March 27, 1976, guidance statement. Further, it proves "absence of harm" as stated by Senator Muskie, by tracing the "pathway of the pollutant through the environment" and showing that the ultimate disposition of the substance results in no danger to health or the environment.

V. Summary

Butyl benzyl phythalate degrades rapidly and completely in microbial systems, and displays a low tendency for mobility in the environment. Butyl benzyl phthalate does not biomagnify in the food chain, being readily metabolized by species tested. Safety factors of about 1000 exist between environmental exposure concentrations and maximum allowable toxicant concentrations for aquatic species. For corresponding acute toxicity, safety factors of about 5000 exist. These findings indicate that BBP does not pose a significant hazard to aquatic organisms.

Exposure to human *via* fish, drinking water, and household uses is about 500,000 times below effect levels observed in mammalian oral administration studies.

Butyl benzyl phthalate is essentially non-toxic on an acute basis to mammalian species. In chronic and subacute studies, a low degree of toxicity is seen, with effects being elicited only at exaggerated levels, several orders of magnitude above actual human exposure levels.

The substance has been shown to be non-oncogenic, non-mutagenic, non-teratogenic in multi-species testing.

The material has been produced at a rate of about 100 million pounds per year for the past 10 years, and this rate is very unlikely to grow by more than a factor of 2–3 in the next 20 years.

These findings, when viewed in light of Congressional intent, clearly support Monsanto Company's contention that butyl benzyl phthalate is a substance which does not properly belong on a list of toxic pollutants.

In view of these findings, Monsanto Company respectfully requests that butyl benzyl phthalate be deleted from the list of toxic pollutants.

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47. Senate Debate on Conference Report Number 95-830, December 15, 1977. See *Legislative History of the Clean Water Act of 1977*, Serial Number 95-14, at 429.

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[FR Doc. 81-2501 Filed 1-23-81; 8:45 am]

BILLING CODE 6560-29-M

GENERAL SERVICES ADMINISTRATION

Office of the Federal Register

National Fire Codes; Request for Comments on NFPA Technical Committee Reports

AGENCY: Office of the Federal Register.

ACTION: Request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At the NFPA's fall meeting in November, or at the annual meeting in May, the NFPA acts on recommendations made by its technical committees.

The Office of the Federal Register, as a public service, requests comments on the technical reports which will be presented at the 1981 Fall Meeting.

DATES: Technical committee reports will be available for distribution January 26, 1981. Comments received on or before April 13, 1981 will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: 1981 Fall Technical Committee Reports are available from NFPA, Publications Department, 470 Atlantic Avenue, Boston, Massachusetts 02210. (No charge for single copies.)

Comments on the reports should be submitted to Vice President Richard E. Stevens, NFPA, 470 Atlantic Avenue, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Gary Segal (202) 523-4534.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Code. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Vice President Richard E. Stevens, NFPA, 470 Atlantic Avenue, Boston, Massachusetts 02210. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 13, 1981 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 14, 1981, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 16-18, 1981, at the Sheraton Centre Hotel in Toronto, Ontario, Canada, by NFPA members.

Copies of the Technical Committee Reports and Technical Committee Documentation, when published, will also be available for review at the Office of the Federal Register, 1100 L Street, N.W., Washington, D.C.

Dated: January 19, 1981

John E. Byrne,

Director, Office of the Federal Register.

Action at the NFPA Fall Meeting in November 1981 is being proposed on the NFPA standards listed below:

1981 FALL MEETING TECHNICAL COMMITTEE REPORTS

Committee	Document	Action
Chemicals and explosives:		
Chemistry laboratories.	NFPA 45, Fire prevention for laboratories using chemicals.	O-C
Electrical equipment in chemical atmospheres.	NFPA 493, Purged and pressurized equipment.	O-C
Fundamentals of dust explosion prevention and control.	NFPA 63, Industrial plants.	W
	NFPA 654, Chemical and plastic dusts.	O-C
	O-CNFPA 655, Sulfur dust.	
Combustible metals	NFPA 48, Magnesium	O-C
	NFPA 481, Titanium	O-C
Finishing processes	NFPA 33, Spray application using flammable and combustible materials.	C-P
	O-C	
	NFPA 34, Dipping and coating processes using flammable and combustible materials.	O-P
Fire department organization.	NFPA 1202, Organization of a fire department.	R
Fire service professional standards development for fire fighter qualifications.	NFPA 1004, Fire/medic professional qualifications.	N-O

1981 FALL MEETING TECHNICAL COMMITTEE REPORTS—Continued

Committee	Document	Action
Fire tests	NFPA 256, Methods of test for roof coverings.	R
	NFPA 258, Test method for measuring the smoke generated by solid materials.	R
	NFPA 259, Test method for potential heat of building materials.	R
	NFPA 260A, Standard method of tests and classification system for cigarette ignition resistent components of upholstered furniture.	N-O
	NFPA 260B, Standard method of test for determining resistance of mock-up upholstered furniture material assemblies to ignition by smoldering cigarettes.	N-O
Flammable Liquids:		
Classification and properties of flammable liquids.	NFPA 321, Classification of flammable liquids.	R
Manufacture of Organic coatings.	NFPA 35, Organic coatings manufacture.	O-P
Tank leakage and repair safeguards.	NFPA 327, Cleaning small tanks.	O-P
	NFPA 328, Manholes and sewers.	O-P
Health care facilities:		
Hyperbaric and hypobaric facilities.	NFPA 56D, Hyperbaric facilities.	O-P
	NFPA 56E, Hypobaric facilities.	O-P
Respiratory Therapy	NFPA 56B, Respiratory therapy.	O-P
	NFPA 56HM, Home use of respiratory therapy.	O-P
Industrial trucks	NFPA 505, Industrial trucks.	O-P
Pyrotechnics	NFPA 1121L, Model State fireworks law.	O-C
	NFPA 1122, Unmanned rockets.	O-P
	NFPA 1123, Public display of fireworks.	O-P
Signaling systems:		
Protective signaling systems.	NFPA 72C, Remote station protective signaling systems.	O-C

Types of Action

Proposed Action on Official Documents

O-P Partial Amendents.
O-C Complete Revision.
O-T Tentative Revision.

Proposed Action on New Documents

N-T Tentative Adoption.
N-O Official Adoption.

Proposed Action on Tentative Documents

T-P Partial Amendments.
T-C Complete Revision.
T-O Official Adoption.

Other Proposed Action

R Reconfirmation.
W Withdrawal.

[FR Doc. 81-2732 Filed 1-23-81; 8:45 am]
BILLING CODE 1505-02-M

National Fire Codes; Request for Proposal for Revisions of Standards

AGENCY: Office of the Federal Register.

ACTION: Request for proposals.

SUMMARY: The National Fire Protection Associations (NFPA) proposes to revise some of its fire safety standards. The Office of the Federal Register, as a public service, requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by the NFPA to develop its standards.

DATES: Interested persons may submit Proposals on or before the dates listed with the standards.

ADDRESS: Richard E. Stevens, Vice President, NFPA, 470 Atlantic Avenue, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Gary Segal (202) 523-4534.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently used these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register (OFR) approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposal

Interested persons may submit amendments, supported by written data, views, or arguments to Richard E. Stevens, Vice President, NFPA, 470 Atlantic Avenue, Boston, Massachusetts 02210. Each person who submits a proposal must include his or her name and address, must identify the notice, and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the dispositio of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

The NFPA will make copies of the Technical Committee Report available for review at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Dated: January 19, 1981.

John E. Byrne,

Director, Office of the Federal Register.

The NFPA requests proposals from the public to amend the following standards:

Aviation	NFPA 402-1978, Aircraft Rescue & Fire Fighting	July 24, 1981.
	NFPA 403, Aircraft Rescue & Fire Fighting	(Open).
	NFPA 406M-1975, Aircraft Rescue & Fire Fighting-Techniques.	July 24, 1981.
	NFPA 412-174, Foam Fire Fighting Equipment on Aircraft Rescue & Fire Fighting Vehicles.	Jan. 23, 1981.
	NFPA 419-1975, Airport Water Supply Systems	(Open).
	NFPA 422M, Aircraft Fire Investigators Manual	(Open).
Boiler-Furnace Explosions	NFPA 85F-1978, Pulverized Fuel Systems	Jan. 23, 1981.
	NFPA 85G-1980, Furnace Implosions in Multiple Burner Boiler-Furnaces.	Jan 23, 1981.
Chemicals & Explosives	Proposed NFPA 43B, Code for Storage of Organic Peroxide.	Jan. 23, 1981.
	NFPA 44A-1974, Manufacture, Transportation, & Storage of Fireworks.	Jan. 23, 1981.
	NFPA 49-1975, Hazardous Chemicals Data	Jan. 23, 1981.
	NFPA 491M-1975, Hazardous Chemical Reactions	Jan. 23, 1981.
	NFPA 493-1978, Intrinsically Safe Process Control Equipment.	July 24, 1981.
Chimneys & Heating Equipment	NFPA 89M-1976, Clearances for Heat Producing Appliances.	(Open).
Dust Explosion Hazards	NFPA 61A-1973, Manufacturing & Handling of Starch	Jan. 23, 1981.
	NFPA 61C-1973, Fire and Dust Explosion in Feed Mills	Jan. 23, 1981.
	NFPA 61D-1973, Fire & Dust Explosions in the Milling of Agricultural Commodities for Human Consumption.	Jan. 23, 1981.
	NFPA 65-1973, Pneumatic Conveying Systems for Handling, Feed, Flour, Grain and Other Agricultural Dusts.	Jan. 23, 1981.
Electrical Safety Requirements for Employee Workplaces.	NFPA 70E-1979, Electrical Safety Requirements for Employee Workplaces.	Jan. 23, 1981.
Explosion Protection Systems	NFPA 68-1978, Explosion Venting	July 24, 1981.
	NFPA 69-1978, Explosion Venting Systems	July 24, 1981.
Fire Prevention Code	NFPA 1-1975, Fire Prevention Code	Jan. 23, 1981.
Fire Service Professional Standards Development for Fire Fighter Qualifications.	NFPA 1002, Fire Apparatus Driver/Operator Professional Qualifications.	Jan. 23, 1981.
Fire Service Professional Standards Development for Fire Inspector & Investigator Qualifications.	NFPA 1031-1977, Professional Qualifications for Fire Inspector, Fire Investigator and Fire Prevention Education Officer.	Jan. 23, 1981.
Fire Service Professional Standards Development for Fire Officer Qualifications.	NFPA 1021-1976, Fire Officer Professional Qualifications	Jan. 23, 1981.
Fire Safety Symbols	Proposed NFPA 173-1982, Fire Protection Symbols for Graphic Displays.	(Open).
Fixed Guideway Transit Systems	Proposed NFPA 130-1982, Fixed Guideway Transit Systems	Jan. 23, 1981.

Flammable Liquids	NFPA 31-1978, Oil Burning Equipment	July 24, 1981.
	NFPA 325M-1977, Fire Hazard Properties of Flammable Liquids, Gases and Volatile Solids.	July 24, 1981.
	NFPA 329-1977, Underground Leakage of Flammable and Combustible Liquids.	July 24, 1981.
Foam	NFPA 11-1978 (incorporating NFPA 11B-1977), Foam Extinguishing System.	(Open).
Health Care Facilities	NFPA 76A-1977, Essential Electrical Systems for Health Care Facilities.	July 24, 1981.
Heights & Areas	NFPA 206M-1976, Building Areas and Heights	(Open).
Investigation of Fires of Electrical Origin	Proposed NFPA 907M-1982, Investigation of Fires of Electrical Origin.	Jan. 23, 1981.
Mining Facilities	NFPA 120 (existing NFPA 653-1971), Coal Preparation Plants.	Jan. 23, 1981.
	Proposed NFPA 123-1982, Underground Coal Mines	Jan. 23, 1981.
National Electrical Code	NFPA 70-1981, National Electrical Code	Nov. 30, 1981.
Pest Control Operations	NFPA 57, Fumigation	(Open).
Protective Equipment for Fire Fighters	Proposed NFPA 1973-1982, Protective Gloves for Fire Fighters.	July 24, 1981.
	Proposed NFPA 1974-1982, Protective Boots for Fire Fighters.	July 24, 1981.
Public Fire Protection Evaluation and Criteria	Proposed NFPA 1301-1982, Evaluation of Regulations, Enforcement and Public Education.	July 24, 1981.
Pyrotechnics	Proposed NFPA 1124-1982, Model Fireworks Safety Law	Jan 23, 1981.
Signaling System	NFPA 71-1977, Central Station Signaling Systems	Jan. 23, 1981.
	Proposed NFPA 72G-1982, Audible & Visual Signaling Appliances for Protective Signaling Systems.	Jan. 23, 1981.
Static Electricity	NFPA 77-1977, Static Electricity	July 24, 1981.
Water Extinguishing Systems	NFPA 13-1980, Installation of Sprinkler Systems	(Open).
	NFPA 14-1980, Installation of Standpipe and Hose Systems	(Open).
	NFPA 20-1980, Centrifugal Fire Pumps	Jan. 23, 1981.
	NFPA 26-1976, Supervision of Valves Controlling Water Supplies for Fire Protection.	July 24, 1981.
	NFPA 291-1977, Uniform Marking of Hydrants	July 24, 1981.

[FR Doc. 81-2733 Filed 1-23-81; 8:45 am]
BILLING CODE 1505-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13608-812]

Administration for Children, Youth and Families Child Welfare, Research and Demonstration Grants Program

AGENCY: Office of Human Development Services, DHHS.

SUBJECT: Announcement of Availability of Grants for the Child Welfare Research and Demonstration Grants Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for financial assistance under title IV, Part B, Section 426 of the Social Security Act, as amended, for a project to establish a National Resource Center on Family Based Services.

DATES: Closing date for receipt of application is March 27, 1981.

Scope of the Announcement

This program announcement covers the program for Fiscal Years 1981 through 1986. Competition for grant awards in other ACYF special emphasis areas will be announced separately in the **Federal Register.**

Program Purpose

The purpose of the Child Welfare Research and Demonstration Grant Program is to support major research and demonstration efforts in selected areas of high impact and national concern where the utilization of findings is expected to make a substantial contribution to the development and welfare of children and their families.

Program Goal and Objectives

The goal of this project is to establish a National Resource Center to support the implementation of programs of services for families in order to prevent the entry of children into foster care.

Applications for the project should indicate that the proposed project will achieve the following program objectives:

- To establish a resource center which reviews, evaluates and disseminates publications and training materials with a special emphasis on those relating to minority populations.
- To establish and maintain a network of informed individuals and agencies, including currently funded ACYF resource and training centers, as listed in Appendix A, state and voluntary agencies, as well as interested citizens, elected officials and other influential persons to support and encourage the development of preventive services.
- To provide technical assistance and consultation to three to five states, selected after consultation with appropriate state and regional staff, reallocating current resources (funding and personnel), in order to establish a preventive services program.
- To prepare a profile of state preventive services for the use of state agencies and schools of social work through analysis of state plans or other reports currently prepared by the states.
- To develop handbooks providing suggestions and guidance on reorienting a state program using current resources; and implementing a successful comprehensive program of preventive services.
- To disseminate information and technical assistance through regional and other conferences.

Eligible Applicants

Any public or private non-profit agency or institution of higher learning may apply.

Grantee Share of the Project

There is a requirement for a grantee share in the cost of the program which may be cash or in kind. The grantee's share must be at least five percent of the total cost of the proposed project.

Available Funds

Of the $12 million appropriated by Congress for the Child Welfare Research and Demonstration Grant Program in Fiscal Year 1981, the Administration for Children, Youth and Families expects to award approximately $250,000 per year for five years for one national resource center.

The application Process

Application for a grant under the Child Welfare Research and Demonstration Grant Program must be submitted on standard forms provided for this purpose. Application kits which include the forms, instructions and program information, including the program guidance must be requested in writing from: Carolyn Puricelli-Boyd, Children's Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

Announcement Number 1360–812, Telephone (202) 245–2872.

Application Submission

One signed original and two copies of the grant application, including all attachments are required, and must be submitted to: Grants Management Branch, Office of Human Development Services, 330 Independence Avenue SW., Room 1740, North Building, Washington, D.C. 20201.

The Application must be signed by an individual authorized to act for the applicant institution and to assume for the institution the obligations designed by the terms and conditions of the grant award.

A–95 Notification Process

This program does not require the A–95 notification process.

Application Consideration

The Commissioner for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified persons independent of the Commissioner for Children, Youth and Families.

The results of the review assist the Commissioner of Children, Youth and Families in considering applications. The Commissioner's consideration also takes into account the comments of the HDS Regional and Headquarter's ACYF staff. If the Commissioner has reached a decision to disapprove a competing grant application, the unsuccessful applicant is notified in writing. The successful applicant will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total period for which project support is contemplated, and the total grantee share expected.

Criteria for Review and Evaluation of Grant Applications

Competing grant applications will be reviewed and evaluated against the following:

—That the proposal objectives are identical with or are capable of achieving the specified program purpose and objectives defined in program guidance.

—That the applicant reviews the relevant literature briefly and concisely, identifying issues to be addressed, both in regard to working with state systems, and in the content of services to be developed for the families at risk.

—That the proposal provides a detailed statement of project objectives, methodology, work plan and timetable that demonstrates the results to be achieved within the first 12 month period of the grant, and a brief outline of objectives for subsequent budget periods.

—That the proposal documents that project personnel are or will be well qualified in the field of child welfare, preventive services to families, and in providing consultation to state agencies.

—That the applicant organization has or will have adequate facilities and resources.

—That the program documents organizational capacity and plan for emphasis on program models and other resources serving racial and ethnic minority families. Such capacity will include the employment of minority personnel.

—That the estimated cost to the government is reasonable considering the anticipated results.

—That letters are submitted from all agencies and organizations who will be cooperating with the project documenting that they have read the proposal and that they will support the project and participate as described in the application.

—That a plan is provided for the evaluation of the various aspects of the project as described in the proposal.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement for FY 1981 grant funds is March 27, 1981.

An application will be considered received on time if:

• The application was sent by registered or certified mail not later than 60 days from publication as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Services; or

• The application is received on or before close of business sixty days from publication in the Department of Health and Human Services mailroom in Washington, D.C.

• In establihsing the date of receipt, consideration will be given to the time date stamps of the mailroom or other documentary evidence of receipt maintained by the Department of Health and Human Services. A hand-delivered application must be delivered to OHDS Room 1740, North Building, Health and Human Services, 330 Independence Avenue, S.W., Washington, D.C. 20201. Hand-delivered applications will be accepted daily between the hours of 9 a.m. and 5:30 p.m. (Eastern Time), except Saturdays, Sundays and federal holidays. *Applications received after the deadline or incorrectly sent to any other office of the Department of Health and Human Services will not be accepted and will be returned to the applicant.*

(Catalog of Federal Domestic Assistance Program Number 13.608, Child Welfare Research and Demonstration Grant Program)

Dated: January 13, 1981.

Laura Miller,

Acting Commissioner for Children, Youth and Families.

Approved: January 19, 1981.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Appendix A—Directory Regional and National Resource Centers

Regional Centers

National Project Officers

Adoption Resource Centers, Patricia Campiglia (202) 755–7730.

Child Welfare Training Centers, Alan Hogle (Regions 1, 2, & 7) (202) 245–2872.

Carolyn Dean.

The address for the above Project Officers is: Training and Technical Assistance Division, P.O. Box 1182, Washington, DC 20013.

Child Abuse and Neglect Resource Centers, James Harrell, National Center for Child Abuse and Neglect, P.O Box 1182, Washington, DC 20013.

Region I

Adoption Resource Center, Jane Quinton, Project Dir., 61 Battery March Street, Boston, MA 02110 (617) 426–8573.

Regional Liaison, Tina Janey-Burrell, JFK Building, Boston, MA 02203 (617) 223–6450.

Child Welfare Training Center, Barbara Pine, Project Dir., School of Social Work, The University of Connecticut, 1800 Asylum Avenue, West Hartford, CT 06117 (203) 523–4814 x 251.

Child Abuse and Neglect Resource Center, Steven Lorch, Project Dir., Judge Baker Guidance Center, 295 Longwoood Avenue, Boston, MA 02115 (617) 323–8390.

Regional Liaison (for both) John Tretton, JFK Building, Boston, MA 02203 (617) 223–6450.

Region II

Adoption Resource Center, Abdul Rahmann Mohammed, Project Dir., Columbia University School of Social Work, 622 West 113th Street, New York, NY 10025 (212) 280–5182.

Regional Liaison, Harry W. Dworkin, Federal Building, 26 Federal Plaza, New York, NY 10007 (212) 264–4118.

Child Abuse and Neglect Resource Center, Dr. John Doris, Project Dir., College of Human Ecology, Cornell University, MVR Hall, Ithaca, NY 14853 (607) 256–7794.

Regional Liaison, Bobbette Stubbs, Federal Building, 26 Federal Plaza, New York, NY 10007 (212) 264–4118.

Child Welfare Training Center, Geraldine Esposito, School of Social Work, Columbia University, 622 West 13th Street, New York, NY 10025 (212) 280–4053.

Regional Liaison, Estelle Haferling Federal Building, Room 41–100, 26 Federal Plaza, New York, NY 10007 (212) 264–4118.

Region III

Adoption Resource Center, Mary Ann Piaseti, Project Dir., Adoption Center of Delaware Valley, 1218 Chestnut Street, Suite 204, Philadelphia, PA (215) 925–0200.

Child Welfare Training Center, Henry Gunn III, Project Dir., School of Social Work, Virginia Commonwealth Univ., 316 North Harrison Street, Richmond, VA 23284 (804) 257–6231.

Regional Liaison (for both), Donald Barrow, 3535 Market Street, Philadelphia, PA 19101 (215) 596–6763.

Child Abuse and Neglect Resource Center, Vanette Graham, Project Dir., Howard University Institute for Urban Affairs and Research, 2900 Van Ness Street, NW., Washington, DC 20008 (202) 686–6770.

Regional Liaison, Gary Koch, 3535 Market Street, Philadelphia, PA 19101 (214) 596–4118.

Region IV

Adoption Resource Center, Ann Sullivan, Project Dir., Group Child Care Consultants, University of North Carolina, School of Social Work, 143 West Franklin, Suite 314, Chapel Hill, NC 27514 (919) 966–2646.

Regional Liaison, James Parker, 101 Marietta Tower, Atlanta, GA 30323 (404) 242–5651.

Child Welfare Training Center, Jean Blankenship, Project Dir., School of Social Work, The University of Tennessee, 2012 Lake Avenue, Knoxville, TN 37916 (615) 974–6015.

Child Abuse and Neglect Center, Dr. Clara Johnson, Project Dir., Regional Institute for Social Welfare Research, P.O. Box 152, Athens, GA 30601 (404) 542–7614.

Regional Liaison (for both), Jerry White, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (404) 221–2134.

Region V

Adoption Resource Center, Mary Hart, Project Dir., University of Michigan, School of Social Work, 1014 East Huron, Ann Arbor, MI 48104 (313) 763–6690.

Regional Liaison, Ruth L. Born, 300 South Wacker, Chicago, IL 60606 (312) 353–6504.

Child Welfare Training Center, Gary Shaffer, Project Dir., University of Illinois at Urbana-Champaign, School of Social Work, 1207 West Oregon Street, Urbana, IL 61801 (217) 333–2261.

Eastern District Office, Regional Liaison, Thelma G. Thompson, 300 South Wacker, Chicago, IL 60606 (312) 353–8065.

Child Abuse and Neglect Resource Center, Adrienna A. Haeuser, Project Dir., Graduate School of Social Work, University of Wisconsin-Milwaukee, Milwaukee, WI 53201 (414) 963–4184.

Regional Liaison, Forrest A. Lewis, 300 South Wacker, Chicago, IL 60606 (312) 353–6514.

Region VI

Adoption Resource Center, Rosalie Anderson, Project Dir., University of Texas, School of Social Work, 2609 University Avenue, Suite 314, Austin, TX 78712 (512) 471–4067.

Regional Liaison, Ralph Rogers, 1200 Main Tower Building, Dallas, TX 75202 (214) 767–4540.

Child Welfare Training Center, Dr. Margaret Campbell, Project Director, School of Social Work, Tulane University, New Orleans, LA 70118) 504) 865–5314.

Regional Liaison, S. M. Pat Murphy, 1200 Main Tower Building, Dallas, TX 75202 (214) 767–2976.

Child Abuse and Neglect Resource Center, Al Valunis Project Director, Graduate School of Social Work, University of Texas at Austin, Austin, TX 78712 (512) 471–4067.

Regional Liaison, Jeanne Manning, 1200 Main Tower Building, Dallas, TX 75202 (214) 767–6596.

Region VII

Adoption Resource Center, Johnnie Penelton, Project Dir., University of Missouri, School of Social Work, Extension Program, 124 Clark Hall, Columbia, MO 65201.

Child Welfare Training Center, Dr. Robert Lee Pierce, Project Director, George Warren Brown School of Social Work, Washington University, 551 Stratford, St. Louis, Mo 63130 (314) 889–6653.

Regional Liaison (for both), Bernice E. Kennedy, 601 East 12th Street, Kansas City, MO 64106 (816) 758–5401.

T3Child Abuse and Neglect Resource Center, Gerald Solomons, Project Dir., Institute of Child Behavior and Development, University of Iowa-Oakdale Campus, Oakdale, IO 52319 (319) 353–4825.

Regional Liaison, Harry McDaniel, 610 East 12th Street, Kansas City, MO 64106 (816) 758–5401.

Region VIII

Adoption Resources Center, Dixie Davis, Project Dir., (Grantee U of Texas Austin), 1221 S. Clarkson St., Suite 314, Denver, CO 80210.

Regional Liaison Jane Mathieu.

Child Welfare Training Center, Margaret Nicholson, Project Director, Graduate School of Social Work, University of Denver, University Park, Denver, CO 80208 (303) 837–2886..

Regional Liaison, Carl Slatt, Federal Office Building, 1961 Stout Street, Denver, CO 80294 (303) 837–3106.

Child Abuse and Neglect Resource Center, Donald Bross, Project Dir., 1205 Oneida Street, Denver, CO 80220 (303) 321–3963.

Regional Liaison, Dolores Meyer, Federal Office Building, 1961 Stout Street, Denver, CO 80294 (303) 837–3106.

Region IX

Adoption Resource Center, Louise Fleenor, County of Los Angeles, Department of Adoptions, 2117 West Temple, Los Angeles, CA 90026 (213) 413–4511.

Child Abuse and Neglect Resources Center, Herschel Swinger, Project Dir. Department of Special Education, California State University, 5151 State University Drive, Los Angeles, CA 90032 (213) 224–3283.

Regional Liaison (for both), Audrey Baker, 50 United Nations Plaza, San Francisco, CA 94102 (415) 446–6187.

Child Welfare Training Center, Dr. Gloria Waldinger, Project Director, School of Social Welfare, University of California, Dodd Hall, 405 Hilgard Avenue, Los Angeles, CA 90024 (213) 825–7822.

Hawaii Office, Dean Daniel Sanders, School of Social Work, University of Hawaii, 2500 Campus Road, Honolulu, HI 96822.

Regional Liaison, Elaine Chann, 50 United Nations Plaza, San Francisco, CA 94102 (215) 556–6153.

Region X

Adoption Resource Center, Karen Wernicke, Project Dir. (Grantee, Regional Research Institute Portland State University), 157 Yesler Way, Suite 206, Seattle, WA 98104 (206) 382–2430.

Regional Liaison, John Downey, 1321 Second Avenue, Mail Stop 811, Seattle, A 98101 (206) 442–2430.

Child Welfare Training Center, Diane Brennan, Project Director, School of Social Work, University of Washington, 1417 N.E. 42nd Street, Seattle, WA 98105 (206) 543–5731.

Regional Liaison, Margaret Sanstad, Arcade Plaza Building, 1321 Second Avenue, Mail Stop 811, Seattle, WA 98101 (206) 399–0838.

Child Abuse and Neglect Resource Center, Bob Hunter, Project Director, 157 Yesler Way, Suite 206, Seattle, WA 98104 (206) 624–5450

Regional Liaison, Bruce Berglund, 1321 Second Avenue, Mail Stop 811, Seattle, WA 98101 (206) 399–0482.

[FR Doc. 81–2612 Filed 1–23–80; 8:45 am]

BILLING CODE 4110–92–M

DEPARTMENT OF THE INTERIOR

Geological Survey

General Mining Order; Intention To Develop an Order for Environmental and Reclamation Standards for Exploration and Mining Operations on Federal and Indian Lands in the Western Phosphate Field

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed issuance of General Mining Order.

SUMMARY: In carrying out lease management responsibilities under the provisions of the Mineral Leasing Act, as amended, the Conservation Division (CD) must assure conservation of solid leasable minerals, prevention of waste and damage to other minerals and resources, and reclamation of the lease area disturbed during exploration, mining, and processing operations on Federal and Indian lands. The CD supervises exploration and mining operations to insure a proper balance among development, conservation, and

environmental concerns. General environmental protection, conservation, and reclamation procedures have been required by the CD to be included in exploration and mine plans in the past. The development of general mining orders incorporating specific environmental and reclamation standards for specific commodities and areas by CD represents a new thrust to ensure that the Nation's resources are developed with due regard for the most up-to-date and economically efficient methods and administration. Solicitation of public comment as an integral step in reviewing existing mining, reclamation, and environmental protection practices is part of this initiative. Accordingly, the CD proposes to develop a General Mining Order for reclamation performance standards for mining operations in the western phosphate field on Federal and Indian leases in Idaho and Montana. Written comments and views by interested persons are requested on the content of the Order and on the need for public meetings to develop such an Order.

DATE: In order to more fully implement the purposes and objectives of the operating regulations for mining on Federal and Indian leases, all concerned parties and the general public are invited and encouraged to submit comments and suggestions as to the content of the proposed General Mining Order for reclamation performance standards for mining operations on Federal and Indian leases in the western phosphate field. Written comments and suggestions must be received on or before March 20, 1981.

ADDRESS: Written comments should be directed to: Mr. Charles L. Sours, Chief, Branch of Rules and Procedures, U.S. Geological Survey, National Center, Mail Stop 650, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: John Rowland, Branch of Solid Minerals Mangement, U.S. Geological Survey, National Center, Mail Stop 650, Reston, Virginia 22092, Telephone: 703–860–7506.

SUPPLEMENTAL INFORMATION: Notice is given that under "Operating Regulations for Exploration, Development, and Production" in 30 CFR Part 231 [37 FR 11041, June 1, 1972, in particular § 231–3(a) and § 231.3(c)(9)], the Chief, CD, intends to develop a General Mining Order for reclamation performance standards for mining operations on Federal and Indian leases in the western phosphate field and solicits views of interested persons on the content of the Order.

The western phosphate field is centered in southeastern Idaho but includes adjacent parts of Montana, Wyoming, Utah, and Nevada.

Thirty-five percent of the national reserves are in southeastern Idaho. Idaho phosphate reserves of 24 percent or greater P_2O_5 have been calculated at 1 billion short tons. Mine production of phosphate on Federal and Indian leases in southeastern Idaho has been reported at over 5 million tons per year, which is about 9 percent of the Nation's total output. There are 86 Federal phosphate leases covering over 43,000 acres in southeastern Idaho. Production is expected to increase to 12 to 15 million tons per year during this decade.

The requirements of this Order would complement existing laws regarding pollution and environmental protection and allow the CD to assure that its regulatory responsibility was being met. It is the intention of the CD that the Order not interrupt interaction between agencies given responsibility for the various environmental and pollution laws.

Comments on the need for public meetings regarding the Order are also solicited. Public meetings will be held if a significant number of responses request them and indicate interest in participation. The probable location for the meetings; if desired, would be Pocatello, Idaho. The Bureau of Indian Affairs, tribes, and State agencies having regulatory responsibilities for mineral development would also be encouraged to participate.

Comments and suggestions should primarily be concerned with the following procedures:

- Procedures for drill hole plugging and reclaiming drill sites;
- Procedures for exploration trench reclamation;
- Procedures for mitigating water quality related problems, such as those associated with drainage systems, sediment control, and erosion;
- Procedures for minimizing fugitive dust emissions;
- Procedures for reducing plant and animal hibitat disturbances;
- Procedures for abandonment of settling ponds, catchment basins, and diversion ditches;
- Procedures for maintaining temporary material (topsoil, subsoil, and nonore associated) piles until time for ultimate reuse in reclamation;
- Procedures for pit abandonment;
- Procedures for waste dump construction with the goal of eliminating erosion and mass movement problems;
- Procedures for abandonment of permanent waste dumps;
- Procedures for revegetation and vegetation maintenance; and
- Aesthetic impacts, if any.

The above list is not necessarily inclusive, and many of the items are interrelated. Comments concerning the above-listed items or additional directly-related items may be approached in a general or a specific manner. Comments on alternate regulatory approaches to achieving the results are also solicited.

Dated: January 16, 1981.

John J. Dragonetti,

Deputy Division Chief—Onshore Minerals Regulation.

[FR Doc. 81-2818 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[AA-37849]

Alaska Native Claims Selection

On December 10, 1979, Cook Inlet Region, Inc., filed selection application AA–37849 under the provisions of Secs. 12(b)(6) of the act of January 2, 1976 (89 Stat. 1151), and I.C.(2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, for the surface and subsurface estates of certain lands located near Juneau, Alaska.

Section 12(b)(6) of the act of January 2, 1976, authorizes conveyance of lands to Cook Inlet Region, Inc., from a selection pool established by the Secretary of the Interior and the General Services Administrator.

The lands are located outside the boundaries of Cook Inlet Region. With the concurrence of the State of Alaska and Cook Inlet Region, Inc., the lands within selection AA–37849 were placed in the pool of properties available for selection by Cook Inlet Region, Inc., subject to valid existing rights, by notice dated May 14, 1979.

The selection application of Cook Inlet Region, Inc., as to the lands described below is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands are considered proper for acquisition by Cook Inlet Region, Inc., and are hereby approved for conveyance pursuant to Sec. 12(b)(6) of the act of January 2, 1976:

Lot 2A of U.S. Survey 3803 situated at Lena Point about 17 miles northwesterly of Juneau, Alaska.
Containing approximately 15.54 acres.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

The grant of the above-described lands shall be subject to:

1. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

2. Any right-of-way interest in the Lena Cove Road transferred to the State of Alaska by the quit-claim deed dated June 3, 1959 executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Lot 2A of U.S. Survey 3808.

Section 12(b)(6) of Public Law (Pub. L.) 94-204 provides that conveyances pursuant to this section shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in Sec. 12(b)(5) of this act and on the basis of values determined by appraisal. The lands described above have been appraised at a value of $45,800. Under Sec. I.C.(2)(e) of the Terms and Conditions this property constitutes 91.60 acre/equivalents. Upon acceptance of title to these lands, Cook Inlet Region, Inc., will relinquish its selection rights to 91.60 acres of its out-of-region entitlement.

Conveyance of the remaining entitlement to Cook Inlet Region, Inc., shall be made at a later date.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Southeast Alaska Empire. Any party claiming a property interest in lands affected by this decision, any agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision by mail shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until February 25, 1981 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Cook Inlet Region, Inc., P.O. Drawer 4-N, Anchorage, Alaska 99509.

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 81-2638 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-84-M

[F-52437]

Alaska Native Claims Selection

On June 8, 1979, Cook Inlet Region, Inc., filed selection application F-52437 under the provisions of Secs. 12(b)(6) of the act of January 2, 1976 (89 Stat. 1151), and I.C. (2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, for the surface and subsurface estates of certain lands located near Fairbanks, Alaska.

Section 12(b)(6) of the act of January 2, 1976, authorizes conveyance of lands to Cook Inlet Region, Inc., from a selection pool established by the Secretary of the Interior and the General Services Administrator.

The lands are located outside the boundaries of Cook Inlet Region. With the concurrence of the State of Alaska and Cook Inlet Region, Inc., the lands within selection F-52437 were placed in the pool of properties available for selection by Cook Inlet Region, Inc., subject to valid existing rights, by notice dated December 18, 1978.

On July 8, 1980, Public Land Order (PLO) 5731 revoked PLO 693 as to the lands described below and withdrew and classified these lands for the purpose of conveyance to Cook Inlet Region, Inc. as part of its entitlement under the Alaska Native Claims Settlement Act (ANCSA).

On June 16, 1972, the State of Alaska amended selection F-024577, filed under the act of July 7, 1958, to include all lands excluding patented lands in T. 1 N., R. 3 W., Fairbanks Meridian. The lands in this decision were withdrawn by Public Land Order (PLO) 693 at the time and therefore were not available for selection by the State of Alaska. In view of this, amended State Selection F-024577 is hereby rejected as to the lands approved for conveyance in this decision.

The selection application of Cook Inlet Region, Inc., as to the lands described below is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands are considered proper for acquisition by Cook Inlet Region, Inc., and are hereby approved for conveyance pursuant to Sec. 12(b)(6) of the act of January 2, 1976:

Fairbanks Meridian, Alaska (Surveyed)

T. 1 N., R. 3 W.,
Sec. 20, E½ and E½W½, those portions lying west of the west right-of-way line of the Alaska Railroad.
Containing approximately 290 acres.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

Section 12(b)(6) of Public Law (Pub. L.) 94-204 provides that conveyances pursuant to this section shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in Sec. 12(b)(5) of this act and on the basis of values determined by appraisal. The lands described above have been appraised at a value of $203,000. Under Sec. I.C.(2)(e) of the Terms and Conditions, this

property constitutes 406 acre/equivalents. Upon acceptance of title to these lands, Cook Inlet Region, Inc., will relinquish its selection rights to 406 acres of its out-of-region entitlement.

Conveyance of the remaining entitlement to Cook Inlet Region, Inc., shall be made at a later date.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, providing, however, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Department of the Interior concerning navigability of water bodies.

Appeals should be filed with Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, P.O. Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. Time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until February 25, 1981 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cook Inlet Region, Inc., P.O. Drawer 4-N, Anchorage, Alaska 99509

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 81-2609 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-84-M

[AA-6986-A and AA-6986-C]

Alaska Native Claims Selections

On December 12, 1974 and December 16, 1974, Cape Fox Corporation for the Native village of Saxman, filed selection applications AA-6986-A and AA-6986-C, respectively, under the provisions of Sec. 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1615(b) (1976) (ANCSA), for the surface estate of certain lands located in the Tongass National Forest in the vicinity of Saxman and Ketchikan.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 16(b) of ANCSA, aggregating approximately 7,064.50 acres, is considered proper for acquisition by Cape Fox Corporation and is hereby approved for conveyance pursuant to Sec. 14(b) of ANCSA.

Copper River Meridian, Alaska (Partially Surveyed)

T. 74 S., R. 91 E.,
- Sec. 2, W½NE¼, NW¼, and NW¼SW¼;
- Sec. 3, NE¼, E½NW¼, and N½SE¼;
- Sec. 10, SE¼SW¼, and SE¼;
- Sec. 11, SW¼;
- Sec. 12, Lots 1 and 2;
- Sec. 13, Lot 1;
- Sec. 14, E½NW¼.

Containing approximately 1,097 acres

T. 74 S., R. 92 E.,
- Sec. 4, NE¼, SE¼NW¼, N½SW¼ and N½SE¼;
- Sec. 5, NW¼NE¼, S½NE¼, and N½SE¼;
- Sec. 7, Lots 7, 8 and 9;
- Sec. 18, Lots 3 and 4;
- Sec. 21, SE¼NW¼ and SE¼SE¼;
- Sec. 22, SW¼SW¼;
- Sec. 27, W½W½;
- Sec. 28, NE¼NE¼, S½N½, and S½;
- Sec. 29, Lots 1 to 6, inclusive, NW¼NE¼, S½NE¼, E½NW¼, NW¼SE¼, and E½SE¼;
- Sec. 32, Lots 1 to 5, inclusive, E½NE¼, and NE¼SE¼;
- Secs. 33 and 34, all;
- Sec. 35, W½W½, SE¼SW¼, and S½SE¼;
- Sec. 36, Lot 1, S½SW¼, and SW¼SE¼.

Containing approximately 3,861 acres.

T. 75 S., R. 92 E.,
- Sec. 1, Lots 1 to 7, inclusive, and W½NW¼;
- Sec. 2, Lots 1, 2 and 3, and NE¼, W½, and NW¼SE¼;
- Sec. 3, E½, NW¼, and N½SW¼;
- Sec. 4, Lots 1 to 4, inclusive, NE¼, and E½NW¼;
- Sec. 5, Lot 1;
- Sec. 9, Lots 1 to 11, inclusive, and SE¼NE¼;
- Sec. 10, Lots 1 and 2, and E½SW¼;
- Sec. 11, Lots 1 and 2.

Containing approximately 2,108.50 acres.

Aggregating approximately 7,064.50 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever, nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile AA-6986-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)). (EIN 11 D9) An easement for a proposed access trail, twenty-five (25) feet in width, from trail EIN 11 D9 (patent 50-79-0084) located in Sec. 11, T. 74 S., R. 91 E., Copper River Meridian, southerly to public lands in Sec. 14, T. 74 S., R. 91 E., Copper River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2) (ANCSA)), any

valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Requirements of Sec. 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k)), that, until December 18, 1983, the portion of the above-described lands located within the boundaries of a national forest shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands; and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Cape Fox Corporation is entitled to conveyance of 23,040 acres of land selected pursuant to Sec. 16(b) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 17,781.83 acres. The remaining entitlement of approximately 5,258.17 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance to the subsurface estate of the lands described above shall be granted to Sealaska Corporation when conveyance is granted to Cape Fox Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published in the Federal Register and once a week, for four (4) consecutive weeks, in the Ketchikan Daily News.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, provided, however, pursuant to Public Law 96-487, this decision constitutes the final administrative determination of the Department of the Interior concerning navigability of water bodies.

Appeals should be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until February 25, 1981 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further informatrion on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cape Fox Corporation, P.O. Box 8558, Ketchikan, Alaska 99901

Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, Alaska 99801

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 81-2610 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-84-M

[Coal Lease Application U-47080]

Utah; Land in Sevier County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for Public Comment and Announcement of a Public Meeting.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale and announces a public meeting to be held at 10:00 a.m., February 10, 1981 in the Sevier County courthouse auditorium, Richfield, Utah. The coal resource to be evaluated consists of all seams available for underground mining in the following described land located approximately 10 miles west of Emery, Utah on the Fishlake National Forest:

T. 21S., R. 4E., SLM
Sec. 25—all;
Sec. 36—N½.
T. 21S., R. 5E., SLM
Sec. 30—Lots 2, 3 and 4, W½ SE¼.

The estimated total recoverable underground reserves are 13,800,000 tons. The coal quality is as follows: Btu—11,530 per lb; Sulfur—0.43 and Ash—8.45 percent. The upper Hiawatha coal bed averages 13.3 feet thick over an estimated 1156 acres of the described lands.

The purpose of the public meeting is to obtain public comments on an environmental assessment being prepared by the Bureau of Land Management, Richfield District Office and the Fishlake National Forest.

The public is invited to submit written comments concerning the fair market value of the coal resource to the Bureau of Land Management and the U.S. Geological Survey. Public comments will be utilized in establishing fair market value for the coal resources in the described lands.

Comments should address specific factors related to fair market value including, but not limited to: The quantity and quality of the coal resource, the price that the mined coal would bring in the marketplace, the cost of producing the coal, the probable timing and rate of production, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, the expected rate of industry return, and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions, may also be submitted at this time.

These comments will be considered in the final determination of fair market value as determined in accordance with 30 CFR 211.63 and 43 CFR 3422.1-2. Should any information submitted as comment be considered to be proprietary by the commentor, the information should be labeled as such and stated in the first page of the submission. Information so marked will not be available to the public if it meets exemptions in the Freedom of Information Act. Comments should be sent to both the Utah State Director, Bureau of Land Management, 136 East South Temple, Salt Lake City, 84111 and to the Regional Conservation Manager, Conservation Division, Geological Survey, Box 25046, Denver Federal Center, Denver, Colorado 80225, to arrive no later than 30 days of the date of this notice.

Dated: January 15, 1981.

Gerald E. Magnuson,

Acting State Director.

[FR Doc. 81-2619 Filed 1-23-81; 8:45 am]

BILLING CODE 4310-84-M

Office of the Secretary

Privacy Act of 1974; Notice of Revised Systems of Records

Notice is hereby given that the Bureau of Mines, Department of the Interior, is proposing to revise two existing systems of records which are subject to the provisions of the Privacy Act of 1974. The Bureau proposes to revise its existing records system titled "Safety Management Information System—Interior, Mines-6" to clarify the categories of individuals and records, and expand the routine uses of records in the system. Another Bureau of Mines existing record system title "Personnel Security Files—Interior, Mines-7" is being revised to expand the categories of individuals covered by the system to include records on employees having ADP access clearances and National Defense Executive Reservists.

The revised records system notices are published in their entirety below. Comments on the proposed changes can be submitted to the Departmental Privacy Act Officer, Office of Information Resources Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240. Copies of any comments received may be inspected in Room 7358, Main Interior Building, 18th & E Streets, NW., Washington, D.C. 20240. All comments received on or before February 25, 1981, will be considered.

William L. Kendig,

Deputy Assistant Secretary of the Interior.

Dated: January 13, 1981.

Interior/EBM-6

SYSTEM NAME:

Safety Management Information System-Interior, Mines-6

SYSTEM LOCATION:

(1) Bureau of Mines, U.S. Department of the Interior, 2401 E Street, NW., Washington, D.C. 20241. (2) All field facilities of the Bureau of Mines retain copies of source documents. (See Appendix for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, concessioners and public visitors to Bureau facilities who have been involved in an accident resulting in personal injury, and/or property damage or associated with a health hazard, radioactive materials, and radiation producing media in performance of job related duties or while a visitor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, social security number (employee only), occupational data and location of accident: data elements about the accident for analytical purposes; and descriptive narrative concerning the reason for the loss producing event. Also copies of records of initial, re-examination, annual and terminal health physical of employees in potentially hazardous health and radiation situations. In addition, all other records directly related to employee health and safety.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7901, (2) 28 U.S.C. 2671–2680, (3) 31 U.S.C. 240–243, (4) Executive Order 12196 (1980), (5) 29 CFR 1960, (6) Federal Employees Compensation Act, as amended, 5 U.S.C. 81.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) provide summary data of injury, illness, and property loss information to Bureau management in a number of formats for analytical purposes in establishing programs to reduce or eliminate loss producing problem areas, (b) provide listings of individual cases to Bureau management to insure that accidents occurring are reported through the Bureau Safety Management Information System for fowarding to the Department of the Interior Safety Management Information System and (c) adjudicating tort and employees claims. Disclosure outside the Bureau of Mines may be made (1) to a Federal, State or local government agency that has partial or complete jurisdiction over the claim or related claims; (2) to provide the Department of Labor through the Department of the Interior quarterly summary listings of fatalities and disabling injuries and illnesses in compliance with 29 CFR 1960.6; (3) to the U.S. Department of Justice, when related to litigation or anticipated litigation; (4) of information indicating a violation or potential violation of statute, regulation, rule, order or license, to appropriate Federal, State or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; and (5) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF THE RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in book format and file folders.

RETRIEVABILITY:

Listed by name or control number of the individual.

SAFEGUARDS:

Security is provided to meet the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

Upon completion of work project or employee separation, health records are transferred to the Official Personnel Folder. Source documents are to be retained at the field level for five years following the end of the calendar year to which the record relates.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Safety Management, U.S. Bureau of Mines, 2401 E Street, NW., Washington, D.C. 20241.

NOTIFICATION PROCEDURE:

To determine whether records are maintained on you in this system, write to the System Manager.

RECORD ACCESS PROCEDURES:

A request for access should be addressed to the System Manager. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your files, write the System Manager.

RECORD SOURCE CATEGORIES:

Supervisors of employees involved in accidents. Investigative reports by supervisors, safety professionals or other management officials or any combination thereof. Additionally, physicians generate health records on employees.

Interior/EBM-7

SYSTEM NAME:

Personnel Security Files—Interior, Mines—7.

SYSTEM LOCATION:

U.S. Bureau of Mines, Department of the Interior, 2401 E Street, NW., Washington, D.C. 20241.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mines employees and former employees whose duties have been designated critical-sensitive and noncritical sensitive for national security purposes and/or whose duties have been designated ADP–I, II, and III. Executive Reservists whose duties have been designated critical-sensitive and noncritical sensitive.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains a record of requirement, basis, level and date of clearance; and a briefing and/or debriefing statement, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended, Executive Order 11179, as amended, and Federal Personnel Manual 732.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

The primary use of the records is to identify individuals who have national security clearances and/or ADP access clearances and their level of clearance. Disclosures outside the Department of the Interior may be made (1) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (2) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (3) to the U.S. Department of Justice when related to litigation or anticipated litigation; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (5) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in a safe having a three-position dial-type, manipulation proof, combination lock, in the same manner as defense classified material.

RETENTION AND DISPOSAL:

Records are held in active status until the individual is debriefed or terminated. Records are destroyed by fire, shredder, disintegrator or pulverizer not later than five years after separation or transfer of the individual or upon notification of death.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Administration, U.S. Bureau of Mines, 2401 E Street, NW., Washington, D.C. 20241.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the System Manager.

RECORD ACCESS PROCEDURES:

To see your records write the System Manager. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your files, write the System Manager.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained as well as data furnished by other Federal agencies on the person concerned.

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BILLING CODE 4310–53–M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note:—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–89

The following applications were filed in region I.

Send Protests To: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 123748 (Sub–1TA), filed January 13, 1981. Applicant: CONNECTICUT LIMOUSINE SERVICE, INC., 1060 State Street, New Haven, CT 06511. Representative: Palmer S. McGee, Jr., One Constitution Plaza, Hartford, CT 06103. *Passenger and their baggage in the same vehicle with passengers* between points in the Counties of New Haven and Fairfield, CT and Atlantic City, NJ. Supporting shipper(s): There are 13 statements in support of this application which may be examined at the ICC Regional Office, in Boston, MA.

MC 152686 (Sub–1–1TA), filed January 12, 1981. Applicant: ARGAS PERCICUS TRAVEL, LTD., trading as TOP DECK AMERICA, 359 North End Road, London, England SW6. Representative: Paul Hauser, Crane & Hawkins, Solicitors, 50/51 Russell Square, London, England WC1. *Passengers and their baggage in both charter and special operations,* between New York, NY, Los Angeles, CA and Miami, FL. Supporting shipper(s): There are 10 statements in support of this application that may be examined at the ICC Regional Office in Boston, MA.

MC 144305 (Sub–1–2TA), filed January 9, 1981. Applicant: McCAIN TRANSPORT, INC, 5 Wade Road, Washburn, ME 04786. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland,

ME 04101. *Contract carrier:* irregular routes: *General Commodities,* between points in the US, under continuing contract(s) with The Pillsbury Company of Minneapolis, MN. Supporting shipper(s): The Pillsbury Company, 608 Second Avenue South, Minneapolis, MN 55402.

MC 147864 (Sub-1–1TA), filed January 13, 1981. Applicant: YANTICAW TRUCKING CORPORATION, 69 Yanticaw St., Clifton, NJ 07013. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Power and generation equipment, transformers, generators, turbine rotors, and motors, and (2) materials, equipment, and supplies used in the manufacture, sale, installation, and servicing of the commodities named in (1) above,* between the facilities of the General Electric Company, located at North Bergen, NJ, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper(s): General Electric Company, 6001 Tonnele Ave., North Bergen, NJ 07047.

MC 138884 (Sub-1–2TA), filed January 9, 1981. Applicant: CONDOR CORPORATION, P.O. Box 630, Dixfield, ME 04224. Representative: John C. Lightbody, Esq, Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *General commodities* between points in the US, under continuing contract(s) with Springhouse Products Co. of Rumford, ME. Supporting shipper(s): Springhouse Products Co., P.O. Box 268, Rumford, ME 04276.

MC 151413 (Sub-1–1TA), filed January 9, 1981. Applicant: TRAFFIC CONSULTANTS, INC., d.b.a. T.C.I., P.O. Box 3096, Pawtucket, RI 02862. Representative: Daniel Sumner, 131 Airport Road, Warwick, RI 02889. *Contract carrier:* irregular routes: *Lumber and related materials,* between points in the US, under continuing contract(s) with King Phillip Reel Corp. of Pawtucket, RI. Supporting shipper(s): King Phillip Reel Corp., Walcott St., Pawtucket, RI 02862.

MC 151004 (Sub-1–1TA), filed January 9, 1981. Applicant: WARNACO TRUCKING CORPORATION, 350 Lafayette Street, Bridgeport, CT 06602. Representative: John F. Ryan, 350 Lafayette Street, Bridgeport, CT 06602. *Contract carrier:* irregular routes: *Piece goods NOIBN and piece goods and clothing not on hangers NOIBN (in boxes or bales),* between all points in FL, GA, SC, NC, VA, MD, DE, NJ, NY, CT, RI, MA, VT, NH, ME, OR, and CA, under continuing contract(s) with Henderson Camp Products of Chicago, IL. Supporting shipper: Henderson Camp Products, Inc., 300 W. Washington St., Chicago, IL 60067.

MC 114777 (Sub-1–1TA), filed January 9, 1981. Applicant: F. G. ADAMS CO., INC., County Road, P.O. Box 97, West Wareham, MA 02576. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *Plastics, plastic materials, and dry cement,* between points in MA and RI, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, RI, and VT. Supporting shipper(s): Consolidated Rail Corporation, 6 Penn Center Plaza, Room 450, Philadelphia, PA 19104. Gulf Oil Company, P.O. Box 3706, Houston, TX 77001. Northeast Cement Division of Citadel Cement Corp., 27 Hollis Street, Room 6, Framingham, MA 01701. Talleyrand Chemicals, 129 John Vertente Blvd., New Bedford, MA 02745.

MC 2860 (Sub-1–25TA), filed January 9, 1981. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Richard M. Parnicky, 71 West Park Avenue, Vineland, NJ 08360. *Containers, and equipment, materials and supplies used in the manufacture and distribution of containers, except in bulk,* between points in IA, IL, IN, KY, KS, MN, MS, MO, OH, and WI, restricted to traffic originating at or destined to the facilities of The Continental Group, Inc. Supporting shipper: The Continental Group, Inc., Stamford, CT 06902.

MC 151413 (Sub-1–2TA), filed January 9, 1981. Applicant: TRAFFIC CONSULTANTS, INC., d.b.a. TCI, P.O. Box 3096, Pawtucket, RI 02862. Representative: Daniel Sumner, 131 Airport Road, Warwick, RI 02889. *Contract carrier:* irregular routes: *Plastic pellets, garden hose, rubber tire treads, shoe soling, plastic tubing, rubber blocks, rubber mats, plasticizers, dry and wet paints, and supplies used in the manufacture of same* between points in the US (except AK and HI), under continuing contract(s) with Teknor Apex Company. Supporting shipper: Teknor Apex Company, 550 Central Ave., Pawtucket, RI.

MC 152098 (Sub-1–2TA), filed January 9, 1981. Applicant: OAKHURST TRANSPORTATION, INC., 175 Oakhurst Street, Lockport, NY 14094. Representative: James E. Brown, 36 Brunswick Road, Depew, NY 14043. *Contract carrier:* irregular routes: *Paints and related products produced, marketed or distributed by The Sherwin-Williams Company* from distribution points located at Buffalo, NY and Rochester, NY to points in NY under continuing contracts with The Sherwin-Williams Company, Brooklyn Heights, OH. Supporting shipper: The Sherwin-Williams Company, 1400 Valley Bell Road, Brooklyn Heights, OH 44131.

MC 124328 (Sub-1–8TA), filed January 12, 1981. Applicant: BRINK'S INCORPORATED, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, N.W., Washington, DC 20006. *Contract Carrier:* irregular route: *Monies—checks, currency and coin* from Charlotte, NC to Fort Mill, SC under continuing contract(s) with Heritage Village Church and Missionary Fellowship, Incorporated. Supporting shipper: Heritage Village Church and Missionary Fellowship, Incorporated, 1515 Mockingbird Lane, 6th Floor, Charlotte, NE 28209.

MC 134291 (Sub-1–1TA), filed January 5, 1981. Applicant: JOSEPH R. ST. HILAIRE, d.b.a. ST. HILAIRE'S DELIVERY SERVICE, 385 Emmett Street, Bristol, CT 06010. Representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. *Contract carrier:* irregular routes: *Paper, pulp, printed matter and allied products,* between Bristol, CT on the one hand, and, on the other, points in MA, NH, ME, VT, RI, NY, NJ, DE, MD and PA, under continuing contract(s) with W. A. Krueger Co. Supporting shipper: W. A. Krueger Co., 12821 W. Bluemound Road, Brookfield, WI 53005.

MC 46421 (Sub-1–2TA), filed January 12, 1981. Applicant: ESCRO TRANSPORT LTD., 275 Mayville Ave., Buffalo, NY 14127. Representative: Jack H. Blanshan, 205 W. Touhy ave., Suite 200, Park Ridge, IL 60068. (a) *Such commodities as are dealt in by food business houses and department stores* and (b) *above-ground swimming pools,* from Tampa, FL and points in its commercial zone to points in FL on, east and south of US Hwy 319. Supporting shipper(s): There are seven statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 145108 (Sub-1–15TA), filed January 12, 1981. Applicant: BULLET EXPRESS, INC., P.O. Box 289, Bay Ridge Station, Brooklyn, NY 11220. Representative: Terrence D. Jones, 2033 K Street, N.W., Washington, DC 20006. *Contract Carrier:* irregular routes: (1) *Wine* from points in CA to New York, NY, and Newark, NJ; (2) *Concentrated orange juice* from Brooksville, FL to Shreveport, LA; and (3) *Ice cream topping* from Northfield and Chicago, IL to Liverpool, NY, Boston, MA, St. Louis, MO, Kansas City, MO, Fostoria, OH, Dallas, TX, St. Paul, MN, Chattanooga,

TN, Jacksonville, FL, Phoenix, AZ, Portland, OR, and Los Angeles and Oakland, CA, under continuing contract(s) with Foremost-McKesson, Inc. Supporting shipper: Foremost-McKesson, Inc., One Post St., San Francisco, CA 94101.

MC 140055 (Sub-1-1TA), filed January 12, 1981. Applicant: MAYS LANDING TRANSPORTATION CO., INC., 184 W. Sherman Ave., Vineland, NJ 08360. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract Carrier:* irregular routes: *Sand, in dump vehicles,* from Dorchester and Port Elizabeth, NJ, to points in the states of CT, DE, MD, MA, NY, PA, and RI. Supporting shipper(s): Whitehead Brothers Company, 60 Hanover Road, Florham Park, NJ 07932.

The following applications were filed in Region 2: Send protests to: ICC, Federal Reserve Bank Building, 101 N. 7th St., Rm. 620, Philadelphia, Pa. 19106.

MC 2368 (Sub-II-11TA), filed December 29, 1980. Applicant: BRALLEY-WILLETT TANK LINES, INC., P.O. Box 495, Richmond, VA 23204. Representative: William T. Marshburn (same as applicant). Chemicals (Defoaming Compound) in bulk, in tank vehicles from Hopewell, VA, to Fort Smith, AR, Chicago, IL, Bremen, IN, and Morristown, TN, and their commercial zones for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Goldschmidt Chemical Corp., Rt. 2, Box 101, Hopewell, VA 23860.

MC 138126 (Sub-II-2TA), filed December 29, 1980. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., Old Denton Road, Federalsburg, MD 21632. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW, Washington, DC 20005. *Such merchandise* as is dealt in and distributed by wholesale, retail and chain grocery stores and food business houses, from points in CT, DE, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC, to Syracuse, NY, for 270 days. Supporting shipper: Empire Freezers, Inc., P.O. Box 4892, Syracuse, NY 13221.

MC 142027 (Sub-II-2TA), filed December 29, 1980. Applicant: BLUE MOUNTAIN EXPRESS, INC., Rt. 8, Box 43, Frederick, MD 21701. Representative: Fred H. Daly, 2550 M Street, NW., Washington, DC 20037. *Contract: Irregular:* (1) Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses (except frozen commodities and commodities in bulk), from the facilities of the Clorox Company located at Frederick, MD to points in the State of PA. (2) Materials, equipment and supplies used in the manufacture, sale and distribution of the commodities listed in part (1) above, from points in the State of PA to the facilities of the Clorox Company located at Frederick, MD for 270 days under continuing contract with the Clorox Company. Supporting shipper: The Clorox Co., 1221 Broadway St., Oakland, CA 94612.

MC 153051 (Sub-2-2TA), filed December 24, 1980. Applicant: ATS TRANSPORT, INC., 34439 Mills Road, North Ridgeville, OH 44039. Representative: James F. Crosby, 7363 Pacific St., Oak Park Office Bldg., Suite 210B, Omaha, NE 68114. *Pads, padding, sanitary pads, toilet preparations, and articles, materials, equipment and supplies used in the manufacture, sale, and distribution of pads, padding, sanitary pads, and toilet preparations,* between points in Cook and Will Counties, IL, on the one hand, and, on the other, points in MI, OH, and OK, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Personal Products Company, Kankankee River Drive, Wilmington, IL 60481.

MC 146348 (Sub-II-4TA), filed December 24, 1980. Applicant: M. T. SERVICES, INC. d.b.a. BRENNAN EXPRESS, P.O. Box 18402, Baltimore, MD 21237. Representative: Raymond P. Keigher, Esquire, 401 E. Jefferson Street, Suite 102, Rockville, MD 20850. *Contract: Irregular:* (1) *such commodities* as are dealt in or used by manufacturers and distributors of electronic equipment, parts and accessories, (2) *controller parts,* (3) *metal cabinets,* and (4) *appliances,* between Baltimore, MD; Mebane, NC; Philadelphia, PA; and Charlottesville, Norfolk, Portsmouth, Richmond, Salem and Waynesboro, VA, restricted to the transportation of traffic having a prior or subsequent movement in foreign commerce, under continuing contract(s) with General Electric Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: General Electric Company, Northside Industrial Park, Charlottesville, VA 22906.

MC 153051 (Sub-II-1TA), filed December 24, 1980. Applicant: ATS TRANSPORT, INC., 34439 Mills Road, North Ridgeville, OH 44039. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *General commodities,* between Chicago, IL, and points in its commercial zone, on the one hand, and, on the other, (1) points in NY in and west of Interstate Highway 81, (2) Erie and Pittsburg, PA, and (3) points in IN, MI, and OH, for 270 days. An underlying ETA seeks 120 days authority. *Restriction:* Restricted to shipments having prior or subsequent movement via rail. Supporting shipper: Stor Dor Freight System, Inc., P.O. Box 3187, Terminal Annex, Los Angeles, CA 90051.

MC 146807 (Sub-II-13TA), filed January 8, 1981. Applicant: S n W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA. Representative: Paul Seleski (same as above). *Cocks or valves, including Bate Valves NOIRN, or parts NOIRN I/S not plated* from Edwardsville, PA to Houston, TX, Tampa and Miami, FL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): R & H Mfg., Inc., Woodward Hill, Edwardsville, PA 18704.

MC 150954 (Sub-II-11TA), filed January 8, 1981. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Avenue, Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. *Malt Beverages,* except in bulk, from Portland, OR to points in CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Blitz-Weinhard Company, 1133 West Burnside, Portland, OR 97209.

MC 107906 (Sub-II-1TA), filed January 5, 1981. Applicant: STEWART INTERMODAL TRANSPORT, INC., d.b.a. TRUCKLOAD EXPRESS, 1621 Elmore St., Cincinnati, OH 45214. Representative: E. H. van Deusen, 220 W. Bridge St., Dublin, OH 43017. *General commodities (with usual exceptions),* between points in Greene County, OH, on the one hand, and, on the other, points in OH for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to tack authority sought herein with authority held under MC 107906. Supporting shippers: 1. Genex Terminal Co., 5901 N. Cicero Ave., Chicago, IL 60646; 2. LDS Trucklines, Inc., 2211 Wood St., Oakland, CA 94607; 3. Jenn Air Corp., 3035 Shadeland, Indianapolis, IN 46226; 4. General Electric Co., Appliance Park, Louisville, KY 40225; 5. Budd Co., Philadelphia, PA; 6. Lomax Consolidators, P.O. Box 1044, Indianapolis, IN 46206; 7. Intertransport Concepts, Inc., 353 S. Santa Fe Ave., Los Angeles, CA 90013; 8. Interstate Consolidation Service, Inc., 2437 E. 14th St., Los Angeles, CA 90021; and 9. Clipper Express, 3401 W. Pershing RD., Chicago, IL 60632.

MC 152925 (Sub-II-1TA), filed January 9, 1981. Applicant: JOHN SETAR, d.b.a. SETAR MOVING & TRUCKING CO., 7371 Parma Park Blvd., Parma, OH 44130. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Contract: Irregular:

General commodities, between Cleveland and Toledo, OH, on the one hand, and, on the other, points in IN, MI, NY and PA, for 270 days. Supporting shipper: Williams & Co., Inc., 901 Pennsylvania Ave., Pittsburgh, PA 15233.

MC 150724 (Sub-II-2TA), filed January 12, 1981. Applicant: DONALD SANTISI TRUCKING COMPANY, 340 Victoria Road, Youngstown, OH 44515. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, OH 43215. *Food stuffs* from Hillsborough County, FL and New Castle County, DE, to points in MD, PA, OH, NY, IN, IL, TN, KY and WV for 270 days. Supporting shipper: Del Monte Banana Company, P.O. Box 011940, Miami, FL 33101.

MC 1222 (Sub-II-2TA), filed January 8, 1981. Applicant: THE REINHARDT TRANSFER COMPANY, 1410 Tenth Street, Portsmouth, OH 45662. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. *Iron and steel articles, and materials, equipment and supplies used in the manufacture, distribution, processing and sale thereof,* between Boyd and Greenup Counties, KY, on the one hand, and, on the other, points in the states of AL, GA, KY, LA, MS, NC, SC, TN, VA, and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper Armco, Inc., 703 Curtis St., Middletown, OH 45043.

MC 61825 (Sub-II-14TA), filed January 12, 1981. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same as applicant). *Petroleum products,* except in bulk, in tank vehicles, from New Orleans, LA, Sewaren, NJ and Wood River, IL to points in AR, FL, GA, IL, IN, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Truckstops Corporation of America, 5042 Linbar Drive, Nashville, TN 37211.

MC 108631 (Sub-2-5TA), filed January 9, 1981. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Road at Industrial Dr., Bethlehem, PA 18017. Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110. *Malt beverages and malt beverage containers* between the facilities of the Schaefer Brewing Company in Fogelsville (Lehigh County, PA on the one hand, and, on the other, points in CT, DE, FL, ME, MD, MA, NH, NJ, NY, RI, VT, VA, and DC for 270 days. Supporting shipper: F & M Schaefer Brewing Co., P.O. Box 2563, Allentown, PA 18001.

MC 25153 (Sub-II-1TA), filed January 9, 1981. Applicant: MARTIN FREIGHT SERVICE, INC., 112 Frick Ave., Waynesboro, PA 17268. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Machinery and machinery parts, materials, equipment and supplies used in the manufacture thereof,* between Franklin County, PA, on the one hand, and, on the other, points in TX and NC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Frick, Inc., Waynesboro, PA 17628.

MC 135364 (Sub-II-10TA), filed January 8, 1981. Applicant: MORWALL TRUCKING, INC., Box 76C, R.D. 3, Moscow, PA 18444. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *General Commodities, (except articles of unusual value, Classes A & B Explosives, Household Goods as defined by the Commission, Commodities in Bulk and Commodities requiring special equipment),* between points in the US (except AK & HI) under a continuing contract or contracts with Harper & Row Publishers, Inc., Dunmore, PA, for 270 days. Supporting shipper: Harper & Row Publishers, Inc., Keystone Indust. Park, Dunmore, PA 18512.

MC 107012 (Sub-II-124TA), filed January 8, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko, (same as applicant). *(1) plastic pipe and fittings and; (2) parts, materials and supplies used in the manufacture and installation of (1) above (except commodities in bulk, commodities of unusual value and commodities requiring special equipment),* from the facilities of the R & G Sloane Mfg. Co., Inc. located at or near Sun Valley, CA and Cleveland, OH to all pts. in the US (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: R & G Sloane Mfg. Co., Inc., 7603 North Claybourn Ave, Sun Valley, CA 91352.

Note.—Common control may be involved.

MC 107012 (Sub-II-125TA), filed January 8, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *Plastic bottles,* from Kolmar Labs, Port Jervis, NY to Olin Corp., Lake Charles, LA for 270 days. An underlying telegraphic ETA seeks 30 days authority. Supporting shipper: Olin Corp, 120 Long Ridge Road, Stamford, CT 06904.

Note.—Common control may be involved.

MC 150339 (Sub-II-12TA), filed January 8, 1981. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr., (same as applicant). *Contract; irregular: Paper bags, plastic bags, and plastic sheeting* between New Philadelphia, OH, on the one hand, and, on the other, pts. in the US (except AK & HI), under continuing contract(s) with Great Plains Bag Corp., 2127 Reiser Avenue, New Philadelphia, OH 44663. Supporting shipper: Great Plans Bag Corp., 2127 Reiser Ave., New Philadelphia, OH 44663.

MC 153487 (Sub-II-1TA), filed January 8, 1981. Applicant: QUALITY DELIVERY CO., P.O. Box 19181, Columbus, OH 43219. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. *Home and office furnishings, appliances and carpeting, and materials, equipment and supplies* used in their manufacture, except commodities in bulk, between Franklin County, OH, on the one hand, and on the other, points in AR, GA, IN, KY, MS, MO, NC, PA, SC, TN, VA and WV, for 270 days. Supporting shipper: The Glick Furniture Co., 1800 E. Fifth Ave., Columbus, OH 43219.

MC 153051 (Sub-II-3TA), filed January 5, 1981. Applicant: ATS TRANSPORT, INC., 34439 Mills Rd., North Ridgeville, OH 44039. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. *General commodities,* except commodities in bulk, between Cincinnati, OH and its Commercial Zone, on the one hand, and, on the other, points in IN and OH on the north of Interstate 70, and points in MI and IL, for 270 days. Restricted to shipments having a prior or subsequent movement by rail. An underlying ETA seeks 120 days authority. Supporting shipper: Intermodal Brokerage Services, Inc., 5480 Ferguson, P.O. Box 22038, Los Angeles, CA 90022.

MC 21866 (Sub-2-38TA), filed January 7, 1981. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Videodiscs and videodisc players,* from the facilities of RCA Corporation at Bloomington, IN to Bridgeport, CT, Springfield and Westwood, MA, Kearny, NJ, and Points in NY and PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: RCA Corporation, Bldg. 204-2, Route 38, Cherry Hill, NJ 08358.

MC 124333 (Sub-II-6TA), filed January 5, 1981. Applicant: BAKER PETROLEUM TRANSPORTATION CO., INC., Pyles Lane, New Castle, DE 19720. Representative: Samuel W. Earnshaw,

833 Washington Bldg., Washington, DC 20005. Contract, Irregular: Petroleum and petroleum products, in bulk, in tank vehicles, between points in DE, MD, NJ, PA, VA and DC, for 270 days. Supporting shippers: Arco Petroleum Products Co., 515 S. Flower St., Los Angeles, CA 90071; B. P. Oil, Inc., 1507 Rockefeller Bldg., Cleveland, OH 44113; Cibro Petroleum, Inc., Suite 233, 111 Presidental Blvd., Bala-Cynwyd, PA 19004; City of Dover, P.O. Box 475, Dover, DE 19901; Container Corp. of America, P.O. Box 511, Wilmington, DE 19899; Enterprise Oil & Gas Co., 14445 Linwood, Detroit, MI 48238; Exxon Co., U.S.A., P.O. Box 2180, Houston, TX 77001; Getty Refining and Marketing Co., P.O. Box 1650, Tulsa, OK 74102; West Bank Oil, Inc., P.O. Box 638, Pennsauken, NJ 08110; Campbell Soup Co., Campbell Place, Camden, NJ 08101.

MC 29537 (Sub-II-2TA), filed January 8, 1981. Applicant: R. H. CRAWFORD, INC., 425 Poplar St., Hanover, PA 17331. Representative: J. Bruce Walter P.O. Box 1146, Harrisburg, PA 17108. *General commodities (except Class A and B explosives, household goods in use and commodities in bulk in tank vehicles),* between pts. in York County, PA, on the one hand, and, on the other, pts. in CT, DE, GA, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, TN, VT, VA, WV, SC and DC, for 270 days. Supporting shipper: D & D Distribution Services, Inc., Elm & Hill Sts., York, PA 17403.

MC 112595 (Sub-II-3TA), filed January 8, 1981. Applicant: FORD BROTHERS, INC., Box 727, Ironton, OH 45638. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215. *Commodities in bulk,* between Louisville, KY; Chicago, IL; Nashville, TN; Columbus and Greenville, SC; Greensboro, Raleigh and Charlotte, NC; and St. Louis, MO on the one hand, and, on the other, points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper(s): Ashland Chemical Co., 5200 Blazer Parkway, Dublin, OH 43017.

MC 29647 (Sub-II-2TA), filed January 12, 1981. Applicant: CHARLTON BROS. TRANSPORTATION CO., INC., 552 Jefferson St., Hagerstown, MD 21740. Representative: Edward J. Donohue, Jr. (same as applicant). Common, regular: *Chemicals, in bulk,* from Bayonne, NJ to Camp Hill, PA, for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to tack. Supporting shipper: Appleton Papers, Inc., 2850 Appleton St., Camp Hill, PA 17011.

MC 152509 (Sub-II-2TA), filed January 12, 1981. Applicant: CONTINENTAL TRANSPORTATION SYSTEMS, INC., 6266 Executive Dr., Dayton, Oh 45424. Representative: H. Neil Garson, 3251 Old Lee Highway Suite 400, Fairfax, VA 22030. (1) *Chemicals, toilet preparations and soaps* (2) *such commodities as is dealt in and sold by department stores, supermarket, hardware stores and drug stores;* and (3) *equipment, materials and supplies used in the manufacture, sale and distribution of (1) and (2).* Between Clifton, NJ on the one hand, and, on the other, points in IL, IN, MI, MN, OH, MO, PA and WI, for 270 days. Supporting shipper: American Cyanamid Co., Berden Ave., Wayne, NJ 07470.

MC 153546 (Sub-II-1TA), filed January 12, 1981. Applicant: M & C TRANSPORT, INC., 1708 E. Manhattan Blvd., Toledo, OH 43608. Representative: Charles K. Boxell, 1st Federal Plaza, 711 Adams St., Toledo, OH 43624. *Rubber articles,* between Hancock and Seneca Counties, OH, on the one hand, and, on the other, pts. in the US, for 270 days. Supporting shipper: Roppe Rubber Corp., P.O. Box 309, 1602 N. Union St., Fostoria, OH 44830.

MC 136343 (Sub-II-16TA), filed January 12, 1981. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Printed matter and materials, equipment and supplies used in the manufacture, sale, and distribution of printed matter* between the facilities of Dayton Press, Inc., at Dayton, OH, on the one hand, and, on the other, points in CT, DE, GA, MD, MA, NJ, NY, NC, PA, RI, SC, VA, and DC for 270 days. Supporting shipper: Dayton Press, Inc., 2219 McCall St., Dayton, OH 45401.

MC 151703 (Sub-II-2TA), filed January 12, 1981. Applicant: NORSUB, INC., R.D. #1, Box 317, Evans City, PA 16003. Representative: John A. Pillar, 1500 Bank Tower, 307 4th Ave., Pittsburgh, PA 15222. Contract, irregular: *(1) iron and steel and iron and steel articles, and (2) Materials, equipment and supplies used in the manufacture and distribution of items named in (1) above* between Heidelberg, PA, on the one hand, and, on the other, points in IL, IN, KY, MD, MI, OH, TN, and WV, under a continuing contract or contracts with Elwin G. Smith Division of Cyclops Corp. of Pittsburg, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Elwin G. Smith Division of Cyclops Corp., P.O. Box 462, Heidelberg, PA 15106.

MC 109448 (Sub-II-3TA), filed January 12, 1981. Applicant: PARKER TRANSFER CO., P.O. Box 256, Elyria, OH 44036. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Plastic articles and plastic materials and (2) Materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above* between Elyria, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Trio Products, Inc., 250 Warden Ave., Elyria, OH 44035.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 89617 (Sub-3-3TA), filed January 9, 1981. Applicant: LEWIS TRUCK LINES, INC., P.O. Box 1494, Conway, SC 29526. Representative: Herbert Alan Dubin, Baskin and Sears, 818 Connecticut Avenue, NW., Washington, DC 20006. *Fiberboard, dimension lumber, studs, and flitches* from the facilities of Holly Hill Lumber Company at or near Holly Hill, SC to the Ports of Charleston and Georgetown, SC, having a prior or subsequent movement by water. Supporting shipper: Holly Hill Lumber Company, P.O. Box 128, Holly Hill, SC 29095.

MC 125037 (Sub-3-8TA), filed January 14, 1981. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *Primary metal products and fabricated metal products (except in bulk)* between the facilities of Church & Clark, Inc. located in Dallas, TX, on the one hand, and, on the other, all points in the U.S. Supporting shipper: Church & Clark, Inc., 13561 Denton Drive, Dallas, TX 75234.

MC 103051 (Sub-3-8TA), filed January 14, 1981. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, P.O. Box 90403, Nashville, TN 37209. Representative: Russell E. Stone (same address as applicant). *Pulpmill Liquids, in bulk, in tank vehicles,* from New Johnsonville, TN to points in AL, GA, and IA. Supporting shipper: American Pelletizing Corporation, P.O. Box 3628, Des Moines, IA 50322.

MC 109708 (Sub-3-18TA), filed January 16, 1981. Applicant: INDIAN RIVER TRANSPORT CO., P.O. Box AG, 2580 Executive Rd., Dundee FL 33838. Representative: Russell E. Haas (same address as above). *Fruit juice concentrate, in bulk in tank vehicles* from Yakima, WA to Williamson, NY; Long Island, NY; Deland, FL; Dade City, FL and Boston, MA. Supporting shipper: Washington State Juice, 115 West "I" St., Yakima, WA 98902.

MC 123880 (Sub-3-1TA), filed January 16, 1981. Applicant: BROWN GOBBLE,

d.b.a. GOBBLE TRUCKING COMPANY, 706 High Street, Lawrenceburg, TN 38464. Representative: B. E. Bryant, attorney, 336 Pulaski Street, Lawrenceburg, TN 38464. *Contract* carrier, *irregular* routes: *Fertilizer and fertilizer materials in bulk and in bags,* from points in TN to points in GA, and from points in AL to points in TN and KY. Supporting shipper: Kaiser Aluminum & Chemical Corporation, Kaiser Agricultural Chemicals Div., P.O. Box 246, Savannah, GA 31402.

MC 147127 (Sub-3–10TA), filed January 16, 1981. Applicant: McLAURIN TRUCKING COMPANY, P.O. Box 26506, Charlotte, NC 28213. Representative: Donald J. Balsley, Jr.; Wick, Vuono & Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. *Textile products, textile machinery, and textile machinery parts,* between points in Gaston and Union Counties, NC, on the one hand, and, on the other, points in SC. Supporting shippers: Gaston County Dyeing Machine Co., P.O. Box 308, Stanley, NC 28164; Standard-Coosa-Thatcher Co. (Carlton Plant), P.O. Box 608, Cherryville, NC 28021; and North Carolina Equipment Company, 3601 Performance Road, Charlotte, NC 28208.

MC (Sub-3–1TA), filed January 8, 1981. Applicant: SAMUEL WINSTON JONES d.b.a SAM JONES CONTRACT CARRIER, 1646 Chardale Drive, Box 37, Clemmons, NC 27012. Representative: Samuel Winston Jones (same address as above). *Contract carrier,* irregular: *Plastic pipe and plastic fittings,* from Colfax, NC to SC, VA, GA, and FL. Supporting shipper: Tridyn Industries Inc., P.O. Box 156, Hwy 421, Colfax, N.C.

MC 85970 (Sub-3–17TA), filed January 15, 1981. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook St., Dyersburg, TN 38024. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. *(1) Fireplaces, barbeques, grills and ventilators and (2) parts and accessories for the commodities in (1) above,* between the facilities of Mobex Corporation, at or near Fullerton, CA, on the one hand, and, on the other, points in the United States, except AK and HI. Supporting shipper: Mobex Corporation, 4325 Artesia Avenue, Fullerton, CA 92633.

MC 153081 (Sub-3–1TA), filed December 13, 1981. Republication—Originally published in Federal Register of 01–07–81, page 1809, volume 46, No. 4. Applicant: RAY MILLER, d.b.a., DIXIE AUTO TRANSIT, Route 1, Willingham Dr., Box 335, Kathleen, GA 31047. Representative: Ray Miller (same as above). *New and used cars and trucks,* between points in GA, AL, FL, MS, LA, TN, SC, NC, VA, MD, PA, KY, WV and NJ. Supporting shippers: Shealy Motor Co., 102 N. Davis Dr., Warner Robins, GA 31093, Robins Toyota, Inc., 616 N. Davis Dr., Warner Robins, GA 31093, Jim's Used Cars, 207 Watson Blvd., Warner Robins, GA 31093.

MC 109708 (Sub-3–17TA), filed January 15, 1981. Applicant: INDIAN RIVER TRANSPORT CO., P.O. Box AG, Dundee, FL 33838. Representative: Russell E. Haas, (same as above). *Mineral Water, in bulk in tank vehicles,* From Saratoga Springs, NY to Points in and East of MN, IA, MO, AR and TX. Restricted to shipments originating at the facilities of Saratoga Springs Co. Supporting Shipper Saratoga Springs Co., RD #4 Geyser Road, Saratoga Springs, NY 12866.

MC 138157 (Sub-3–43TA), filed January 14, 1981. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). *Glass containers* between Hamilton County, TN; Knox County, OH; Mineral County, WV; Harrison and Desoto Counties, MS; and Navaro County, TX on the one hand and, on the other, points in the United States. Supporting shipper: Chattanooga Glass Co., 400 W. 45th Street, Chattanooga, TN 37410.

MC 126542 (Sub-3–5TA), filed January 15, 1981. Applicant: B. R. WILLIAMS TRUCKING, INC., P.O. Box 3310, Oxford, AL 36201. Representative: John W. Cooper, P.O. Box 56, Mentone, AL 35984. *Contract carrier,* irregular routes; *parts and accessories for machinery and motorized vehicles, and materials, supplies, equipment and machinery used or useful in the manufacture, packaging, packing, and shipper thereof,* between points in the U.S., except AK and HI, under continuing contracts with Federal Mogul, Inc., supporting shipper: Federal Mogul, Inc., P.O. Box 100, Jacksonville, AL 36265.

MC 153106 (Sub-3–1TA), filed January 15, 1981. Applicant: THORNTON FURNITURE CARRIERS, INC., 840 Winston Street, Greensboro, NC 27405. Representative: George McClintock (same address as above). *New furniture, restricted to residential deliveries,* from Greensboro, NC to all points in VA, DC, WV, MD, DE, PA, NY, OH, MI, IN, IL, WI, MO, AR, LA, MS, TN, KY, AL, GA, FL, SC, NJ, TX, CT, OK, NE, KS, IA, MN, and NC. Supporting shippers: Tysinger Furniture House, Inc., 609 National Highway, Thomasville, NC 27360; Thornton Furniture Co., Inc., 1803 Miller Dr., Greensboro, NC 27410 and Furniture Land South, Inc., 2200 South Main St., High Point, NC 22261.

MC 139934 (Sub-3–2TA), filed January 15, 1981. Applicant: ALL SOUTHERN TRUCKING, INC., P.O. Box 2698, Tampa, FL 33601. Representative: Robert R. Solomon (same address as above). *Such commodities as are dealt in or used by food and drug (except prescription) business houses,* between Jacksonville, FL and points in AL, FL, GA, NC, SC and TN. Supporting shipper: Peninsular Warehouse Co., Inc., 1670 Industrial Blvd., Jacksonville, FL 32205.

MC 146343 (Sub-3–4TA), filed January 14, 1981. Applicant: SOUTHERN EXPRESS CORPORATION, 505 South Ocean Boulevard, Pompano, FL 33062. Representative: S. Christopher Stowe, Jr., 2028 Warwick Avenue, Warwick, RI 02889. *Contract carrier;* irregular routes; *electric cable (brass, bronze, copper, NOI), metal shielding tapes, plastic granules, copper bearing scrap having value for recycling or remelting purposes only, copper rod, copper wire, aluminum tapes, steel tapes, plastic binder tapes, dry paints, and related materials incidental to the manufacture and distribution of the commodities listed above (except in bulk),* between Rocky Mount and Hickory, NC and points in CT, MA, ME, NH, NJ, NY, PA, RI, and VT. Restriction: Service to be performed under a continuing contract or contracts with Superior Cable Corporation, a Delaware corporation. Supporting shipper: Superior Cable Corp., P.O. Box 489, Hickory, NC 28601.

MC 153421 (Sub-3–2TA), filed January 14, 1981. Applicant: PRINTCO, INC., P.O. Box 10639, Memphis, TN 38116. Representative: Lawrence E. Lindeman, 425 13th St., N.W., Suite 1032, Washington, DC 20004. *Plastic film,* between Harrington, DE, on the one hand, and, on the other points in and east of TX, OK, KS, NE, SD, and ND. Supporting shipper: Consolidated Thermo Plastics, P.O. Box 27, Harrington, DE.

MC 144082 (Sub-3–14TA), filed November 21, 1980. Republication—Originally published in Federal Register of December 15, 1980, page 82377, volume 45, No. 242. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Blvd., P.O. Box 7191, Charlotte, NC 28217. Representative: Wyatt E. Smith (same address as above). *Contract carrier,* irregular routes; *Malt liquors, ale, beers, wine NOI, liquors, alcoholic beverages, NOI,* from points in the states of MN and MI to points in the states of GA, NC, SC, TN, VA, MD and DC, restricted to service performed under a continuing contract with Fred

Amon. Supporting shipper: Fred Amon, 309 Fieldbrook Place, Charlotte, NC 28217.

MC 146891 (Sub-3-1TA), filed ———. Republication—Originally published in Federal Register of 11-19-80, page 76540, volume 45, No. 225. Applicant: A & G EXPRESS, INC., 4807 Millbrooke Road, Albany, GA 31701. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. *Contract carrier,* irregular routes; *Agricultural chemicals, products and supplies used in the manufacture, sale and distribution thereof,* between points in the US, under a continuing contract with Helena Chemical Co. Supporting shipper: Helena Chemical Company, Suite 3200, 5100 Poplar Ave., Memphis, TN 38137.

MC 153454 (Sub-3-1TA), filed January 7, 1981. Applicant: TAYLOR TRUCKING, INC., Star Route Box 77, Double Springs, AL 35553. Representative: Irving M. Taylor (same as above). *Contract carrier;* irregular routes; *scales and scale parts including but not limited to, structural steel and fabricated steel and materials, supplies and equipment used in the manufacture and distribution of commodities named in above,* from the facilities of Powell All-Steel Scale Corp. at Arley, AL, on the one hand, and, on the other, points in the US in and east of MT, WY, CO, NM, under continuing contract with Powell All Steel Scales, Inc. Supporting shipper: Powell All-Steel Scales, Inc., P.O. Box 125, Highway 257, Arley, AL 35541.

MC 152008 (Sub-1TA), filed January 14, 1981. Applicant: ESCAMBIA RECYCLING CORPORATION, P.O. Box 12388, Pensacola, FL 32582. Representative: Damon L. Doyle (same as address of applicant). *Industrial waste treatment plant sludges, industrial painting process residues, and other industrial waste products as required* from Naval Air Station, Pensacola, FL to Waste Management of Alabama landfill at Emelle (Sumter County), AL. Supporting shipper: U.S. Navy, Naval Air Station Pensacola, Navy Public Works Center, Pensacola, FL 32508.

MC 143293 (Sub-3-29TA), filed January 14, 1981. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Serby & Mitchell, P.C., 3390 Peachtree Road, N.E., Fifth Floor, Lenox Towers S., Atlanta, Georgia 30326. *Such commodities as are dealt in or used by manufacturers of lighting equipment (except in bulk),* between the facilities of Lithonia Lighting, a Division of National Service Industries, Inc., Decatur, Conyers and Cochran, GA, Chicago, IL, Vermilion, OH and Crawfordsville, IN, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT and WA. Supporting shipper: Lithonia Lighting, A Division of National Service Industries, Inc., Box A, Conyers, GA 30207.

MC 114334 (Sub-3-20TA), filed January 14, 1981. Applicant: BUILDERS TRANSPORTATION COMPANY, 3710 Tulane Road, Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Building, Memphis, TN 38103. *Iron and steel articles* between Shelby County, TN on the one hand, and Atlanta, GA, Savanah, GA, New Orleans, LA, Kansas City, MO and Houston, TX on the other. Supporting shipper: Primary Steel, Inc., 2672 Channel Ave., Memphis TN 38113.

MC 145912 (Sub-3-1TA), filed January 13, 1981. Applicant: TRUCK SERVICE, INC., 303 Vance St., Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Contract:* Irregular: (1) *Plastic articles,* from Gaston County, NC to all pts. in U.S. (except AK and HI) under a continuing contract with Allied Plastics, Inc.; (2) *Plastic articles and materials and supplies used in the manufacture and distribution of plastic articles* between Rutherford County, NC on the one hand, and on the other, pts. in GA, FL, SC, TN, IN, VA, AL, IL, AR, MS, NJ, LA, NY, TX, PA, OH, MA under a continuing contract with United Southern Industries, Inc.; and (3) *Plastic garment hangers and material and supplies used in the manufacture and destination of plastic garment hangers* between Rutherford County, NC, on the one hand, and on the other, pts. in AL, FL, GA, KY, LA, MS, NC, SC, TN, VA, OH, NY, TX, NJ and CA under a continuing contract with A & E Warbern Co., Inc. Supporting shipper: Allied Plastics, Inc, Gastonia, NC; United Industries, Inc. Forest City, NC.

MC 114334 (Sub-3-19TA), filed January 14, 1981. Applicant: BUILDERS TRANSPORTATION COMPANY, 3710 Tulane Road, Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Building, Memphis, TN 38103. *Iron and steel articles and materials and supplies (EXCEPT IN BULK) and equipment used in or in connection with the production and manufacture of iron and steel articles* Between points in Ellis County, TX on the one hand, and on the other, points in GA, FL, SC, NC, TN, AL and MS. Supporting shipper: Chaparral Steel Company, P.O. Box 1100 Midlothian, TX 76065.

MC 146937 (Sub-3-3TA), filed December 10, 1980. Republication-Originally published in Federal Register of 12-22-80, page 84171, volume 45, No. 247. Applicant: ALL STAR AIR FREIGHT, INC., 7001 West 20th Street, Hialeah, FL 33014.Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd St., Miami, FL 33166. *Contract carrier,* irregular routes; *Yarn, fabric, finished and semi-finished garments and garment hangers,* between points in AL, AR, FL, GA, KY, MD, MS, NJ, NY, NC, OK, PA, SC, TN, TX, VA, and WV, under continuing contract with Niki-Lu Industries, Inc., Miami Lakes, FL. Supporting shipper: Niki-Lu Industries, Inc., 14540 N.W. 60th Ave., Miami Lakes, FL.

Agatha L. Mergenovich,
Secretary.

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BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP3-140]

Motor Carrier Finance Application Decision-Notice

Decided: January 12, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section

of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before March 12, 1981, (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. (Member Parker not participating.)

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 8214 (Sub-6F), filed December 22, 1980. Applicant: PORT JERSEY TRANSPORTATION, a Corporation, 2 Colony Rd., Jersey City, NJ 07305. Representative: Charles J. Williams, P.O. Box 186, 1815 Front St., Scotch Plains, NJ 07076. Transporting *such commodities* as are dealt in or used by chain grocery and food business houses (except commodities in bulk), between points in the U.S., under continuing contract(s) with Port Jersey Distribution Services, Inc., of Jersey City, NJ. Condition: (1) Applicant shall conduct separately its for-hire carriage and other business operations, and (2) it shall maintain separate accounts and records for each operation.

MC 59264 (Sub-75F), filed December 22, 1980. Applicant: SMITH & SOLOMON TRUCKING COMPANY, a Corporation, P.O. Box 397, How Lane, New Brunswick, NJ 08903. Representative: Zoe Ann Pace, One World Trade Center, Suite 2373, New York, NY 10048. Transporting (1) *alcoholic liquors,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic liquors, between the facilities of Hiram Walker & Sons, Inc., and its affiliates in NJ, on the one hand, and, on the other, points in CT, MA, and RI.

MC 112304 (Sub-249F), filed December 24, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner (same address as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilities of Armstrong World Industries, Inc.

MC 116915 (Sub-130F), filed December 22, 1980. Applicant: ECK MILLER TRANSPORTATION CORPORATION, Rt. No. 1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting (1) *iron and steel articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in St. Louis County, MO, on the one hand, and, on the other, points in the U.S.

MC 116915 (Sub-131F), filed December 24, 1980. Applicant: ECK MILLER TRANSPORTATION CORPORATION, Rt. No. 1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting (1) *rubber and rubber products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in St. Clair County, MO, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, CO, MO, and NM.

MC 119974 (Sub-233F), filed December 24, 1980. Applicant: L. C. L. TRANSIT CO., 949 Advance St., Green Bay, WI 54304. Representative: L. F. Abel, P.O. Box 949, Green Bay, WI 54305. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk in tank vehicles), between the facilities of Eastman Kodak Company at or near Oak Brook, IL, and points in WI and the Upper Peninsula of MI.

MC 123405 (Sub-83F), filed December 24, 1980. Applicant: FOOD TRANSPORT, INC., R.D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting *general commodities* (except those of unusual value, classes A and B expolosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with Heinz USA, Division of H. J. Heinz Co., of Pittsburgh, PA.

Note.—Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of certificate in No. MC-123405, Subs 33, 35, 41, and 48, at applicant's written request.

MC 138384 (Sub-1F), filed December 29, 1980. Applicant: GOLDEN PRINGLE EXPRESS, LTD., a corporation, 310 Patton St., Moberly, MO 64207. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *malt beverages,* between points in the U.S. under continuing contract(s) with Central Distributing Company, Inc., of Moberly, MO.

MC 140364 (Sub-6F), filed December 24, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, a corporation, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, 111 West Clarendon, Phoenix, AZ 85013. Transporting (1) *such commodities* as are dealt in or used by chain grocery and food business houses, department and variety stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Safeway Stores, Incorporated, Oakland, CA.

MC 142835 (Sub-13F), filed December 23, 1980. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Auburndale, FL 33823. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *food and related products,* (a) between points in Allegheny County, PA, and Sandusky and Lucas Counties, OH, on the one hand, and, on the other, points in AL, LA, MS, NC, OH, PA, TN, TX, and VA, and (b) between points in Ottawa County, MI, on the one hand, and, on the other, points in AL, FL, GA, LA, MI, MS, NJ, NC, SC, TN, TX, and VA.

MC 144345 (Sub-20F), filed December 29, 1980. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Ave., Caldwell, ID 83605. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Transporting *foodstuffs,* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Ore-Ida Foods, Inc.

MC 146215 (Sub-1F), filed December 23, 1980. Applicant: WOLFE TRUCKING, INC., 1333 E. 7th St., Los Angeles, CA 90021. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting (1) *rubber and plastic*

products, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Mobil Chemical Company, of Macedon, NY.

MC 150825 (Sub-1F), filed December 24, 1980. Applicant: B & T MAIL SERVICE, INC., 2521 South Ronke Lane, New Berlin, WI 53151. Representative: Joseph E. Ludden, P.O. Box 1567, LaCrosse, WI 54601. Transporting (1) *dessert preparations,* including dry or liquid flavorings, and (2) *materials and supplies* used in the manufacture and distribution of dessert preparations and dairy products, between points in the U.S., under continuing contract(s) with Eskimo Flavors, Division of Eskimo Pie Corporation, of New Berlin, WI.

MC 150545 (Sub-1F), filed January 5, 1981. Applicant: TRI-CITY TIRES, INC., 1016 Butt St., Chesapeake, VA 23324. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Uniroyal Tire Company, of Conyers, GA.

MC 153205F, filed December 16, 1980. Applicant: ELMO D. BRITTON, Browning, MO 64630. Representative: (same as above). Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

[FR Doc. 81-2763 Filed 1-23-81; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP3-139]

Motor Carrier Finance Application Decision-Notice

Decided: January 12, 1981.

The following applications filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(b). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operation authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before March 12, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. (Member Parker not participating.)

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

MC 1824 (Sub-129F), filed December 28, 1981. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21665. Representative: Thomas M. Auchincloss, Jr., 918 16th St., NW., Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), (1) between Hagerstown MD, and Wytheville, VA, over Interstate Hwy 81, and (2) between Washington, DC, and Danville, VA, over U.S. Hwy 29, serving all intermediate points in (1) and (2), and points in VA on and east of Interstate Hwy 77, as off-route points.

MC 7555 (Sub-79F), filed January 2, 1981. Applicant: TEXTILE MOTOR FREIGHT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K St., N.W., Washington, DC 20006. Transporting *malt beverages,* in containers, between points in Forsyth County, NC, on the one hand, and, on the other, points in NY.

[FR Doc. 81-2762 Filed 1-23-81; 8:45 am]
BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Information Science & Technology; Meeting

In accordance with the Federal Advisory Act, PUb. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Information Science & Technology.
Date & Time: February 13, 1981, 9 a.m. to 4 p.m.
Place: Room 1224, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Mrs. Darcey Higgins, Room 1250, National Science Foundation, Washington, DC 20550. Telephone: 202/357-9572. Persons planning to attend should notify Mrs. Higgins by February 6, 1981.
Summary Minutes: May be obtained from the Contact Person, at the above stated address.
Purpose of Committee: To provide advice, recommendations, and oversight concerning support for activities related to the Foundation's program in information science and technology.
Agenda: Welcome and Introductory Remarks. Review of Current Activities and Status of Reorganization Plans. Working Group on Information Technology Discussion of Report. Working Group on Economics of Information Discussion of the Conference on the Role of Information in Ecnomics and in the Economy. Miscellanea. Public Participation.

Dated: January 19, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-2615 Filed 1-23-81; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Physics; Amended Meeting

The meeting of the Advisory Committee for Physics, scheduled for

February 5, 6, and 7, 1981, is being changed to February 5 and 6 only. There are no other changes in the agenda.

This Notice appeared in the Federal Register on Monday, January 19, 1981. (46 FR 5105)

January 19, 1981.

M. Rebecca Wipkler,

Committee Management Coordinator.

[FR Doc. 81-2617 Filed 1-23-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Anthropology of the Advisory Committee for Behavioral and Neural Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Anthropology of the Advisory Committee for Behavioral and Neural Sciences.

Date/Time: February 11-13, 1981—9:00 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, N.W., Washington, D.C.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director for Anthropology, Room 320, National Science Foundation, Washington, D.C. 20550; telephone (202) 357-7804.

Purpose of Committee: To provide advice and recommendations concerning support for research in anthropology.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. (c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 19, 1981.

[FR. Doc. 81-2613 Filed 1-23-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Earthquake Hazards Mitigation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Earthquake Hazards Mitigation of the Advisory Committee for Engineering and Applied Science.

Date and Time: February 11, 1981, 9 a.m. to 5 p.m. February 12, 1981, 9 a.m. to 12 noon.

Place: University of California at Santa Barbara, Santa Barbara, California, 2/11—University Center Room 2253. 2/12—University Center Room 2292.

Type of Meeting: Open.

Contact Person: Ms. Ramona Lauda, Professional Assistant, Division of Problem-Focused Research, Rm. 1134A, National Science Foundation, Washington, D.C. 20550, (202) 357-7815.

Summary Minutes: May be obtained from the Contact Person at the above address.

Agenda:

February 11

9:00-9:30 a.m.—Welcome and Review of Recent Events.
9:30-10:00—Report of Task Groups.
10:00-Noon—Long Range Planning and Budget Cycle.
Noon-1:00 p.m.—Lunch.
1:00-4:00—Continued Discussion on Long Range Planning.
4:00-5:00—Non-Member Participation in Discussions.

February 12

9:00-9:30 a.m.—Discussion of Subcommittee Membership.
9:30-Noon—Continued Discussion on Long Range Planning.
Noon—Adjournment.

January 19, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-2614 Filed 1-23-81; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Facilities of the Advisory Committee for Materials Research; Amended Meeting

The Subcommittee on Facilities is meeting in Washington, D.C. on February 9 and 19, 1981.

The agenda for February 9, which is a partially closed session, was inadvertently left out. The agenda is as follows:

February 9, Room 540

Open Session

9:00—Welcome by NSF and Charge to the Subcommittee.
9:30—Budgets and Budget Issues.

Closed Session

10:30—Review and comparison of declined proposals (and supporting documentation) with the successful awards under the Materials Research Laboratory Program.
5:00—Adjournment

The Reason for Closing Section of the original meeting notice should also be changed as follows:

Reason for Closing: The Subcommittee will be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

The notice for this meeting appeared in the Federal Register on Monday, January 19, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

January 19, 1981.

[FR Doc. 81-2616 Filed 1-23-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating Licese No. DPR-6, issued to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Michigan. The amendment is effective as of its date of issuance.

The amendment incorporates in the Technical Specifications surveillance requirements for a new automatic isolation valve in the fire protection water spray system protecting the yard transformers.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the isssuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in

connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 1, 1980, (2) Amendment No. 39 to License No. DPR-6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 19th day of January, 1981.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 81-2770 Filed 1-23-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-413/414]

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2); Issuance of Director's Decision

On March 13, 1979, notice was published in the Federal Register (44 FR 14654) that by petition dated January 28, 1979, Mr. Jesse L. Riley, President, Carolina Environmental Study Group (CESG), had requested that the Commission reopen safety phases of the licensing proceedings for Duke Power Company's Catawba Nuclear Station and McGuire Nuclear Station. CESG has asserted several issues as the basis for its request. On March 7, 1979, the Director of the Office of Nuclear Reactor Regulation advised CESG that its request to reopen the McGuire proceedings had been referred to the Atomic Safety and Licensing Board since the matter of issuance of operating licenses for the McGuire facility was currently pending before that Board. The Catawba case is not currently pending before any Licensing or Appeal Board. Consequently, the petition has been treated as a request to reopen the safety hearing on Duke Power Company's application for the Catawba Nuclear Station only.

The Commission's Director of Nuclear Reactor Regulation has treated this request as a request for action under 10 CFR 2.206. Upon review of records pertinent to the issues raised by CESG, the Director has determined that the request does not provide an adequate basis to reopen the hearing. Accordingly, the request has been *denied* for the reason set forth in a document entitled Director's Decision 81-1.

Copies of the Director's decision are available for inspection in the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C. 20555 and at the Local Public Document Room for Catawba, located at the York County Library, 325 South Oak Avenue, Rock Hill, South Carolina 29730. A copy of this decision will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c), the decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Bethesda, Maryland this 9th day of January, 1981.

Edson G. Case,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 81-2771 Filed 1-23-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co. (Oyster Creek Nuclear Generating Station); Order for Modification of License and Grant of Extension of Exemption

I.

Jersey Central Power & Light Company (the licensee) is the holder of Provisional Operating License No. DPR-16 which authorizes the licensee to operate the Oyster Creek Nuclear Generating Station at power levels not in excess of 1930 megawatts (thermal) rated power. The facility is a boiling water reactor located at the licensee's site in Ocean County, New Jersey.

II.

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility,and to restore the original intended design safety margin for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptable criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are high under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed loan definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program.

Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583-1, dated October 1979 (Subsequently referred to as NEDO-21888 and NEDO-24583-1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservation basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III.

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modification for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determinations to be needed by such an assessment. In response to our letter, the licensee's letter dated June 11, 1980 indicated its commitments to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by December 31, 1981.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementations of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensees' proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by December 31, 1981 should be confirmed and formalized by Order.

IV.

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the exension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than December 31, 1981 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI.

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 26, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. whether the licensees should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensees may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII.

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 or through the Commission's local public document room at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Brick Town, New Jersey 08723.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter, I. R. Finfrick, JCP&L, to Director, NRC, dated June 11, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–2772 Filed 1–23–81; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–272]

Public Service Electric and Gas Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 30 to Facility Operating License No. DPR–70, issued to Public Service Electric and Gas

Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 1 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specification that limits the axial flux difference target band.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 20, 1980, (2) Amendment No. 30 to License No. DPR-70, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 22nd day of December 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-2773 Filed 1-23-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 63 to Facility Operating License No. DPR-32 and Amendment No. 63 to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company (the licensee), which revised the licenses for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments add license conditions to include the Commission-approved Nuclear Security Personnel Training and Qualifications Program as part of the licenses.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filing dated September 19, 1980 is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 63 and 63 to License Nos. DPR-32 and DPR-37, and (2) the Commission's related letter dated December 18, 1980. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of December 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga, Chief,

Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-2774 Filed 1-23-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

January 21, 1981.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following inforamation:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;

Whether small businesses or organizations are affected;

A description of the Federal budget functional category that covers the information collection;

An estimate of the number of responses;

An estimate of the total number of hours needed to fill out the form;

An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

The name and telephone number of the person or office responsible for OMB review; and

An abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF COMMERCE

(Agency Clearance Officer—Edward Michals—202–377–3627)

New

Economic Development Administration
Verbal telephone confirmations
On occasion
Businesses or other institutions
Project letter of credit designees
SIC: multiple
Small businesses or organizations
Area and regional development, 520 responses, 130 hours; $3,000 Federal cost, 1 form
William T. Adams,
Used to resolve "undisbursed loc balances" between EDA accountingrecords and the Federal Reserve Banks.
Economic Development Administration
Profile—Early Information System (Title IX LTED/RLF)
ED–1100A
On occasion
State or local governments/businesses or other institutions
State and local governments, pub. and quasi-pub, non-prof. org. Ind.
SIC: multiple
Small businesses or organizations
Area and regional development, 75 responses, 630 hours; $27,000 Federal cost, 1 form
William T. Adams, 202–395–4814
Will be used by EDA field representative to interview potential applicants and secure initial data needed by EDA to select proposals and authorize applications for financial assistance
Economic Development Administration
Special adjustment assistance application form
M–4 supplement
On occasion
State or local governments
State, city, non-prof. pub. orgs., a consortium of pol. etc.
SIC: all
Area and regional development, 60 responses, 315 hours; $75,500 Federal cost, 1 form
William T. Adams, 202–395–4814
The information (form) is needed to receive benefits under the sudden and severe economic dislocation (SSED) program. Because the SSED program responds to unforeseen disruptions to an economy, specific and new information is needed to identify the problem to be addressed. No other program in the Agency is designed to address such special needs
Economic Development Administration
"Provide Early Information System"
ED–1100
Other—See SF83
State or local governments/businesses or other institutions
State and local governments, pub. and priv. nonprof. orgs., Ind., etc.
SIC: multiple
Small businesses or organizations
Area and regional development, 1,000 responses, 1,500 hours; $75,000 Federal cost, 1 form
William T. Adams, 202–395–4814
Will be used by EDA to interview prospective applicants and secure data needed to select projects for possible funding commencing in fiscal year 1981.

DEPARTMENT OF THE TREASURY

(Agency Clearance Officer—Ms. Joy Tucker—202–634–2179)

Extensions (Burden Change)

United States Customs Service
Withdrawal for consumption—duty paid warehouse
Withdrawal for consumption
7505 and 7505–A
On occasion
Businesses or other institutions
Importers
Sic: 422
Small businesses or organizations
Federal law enforcement activities, 836.600 responses, 83.660 hours; $487.673 Federal cost, 2 forms
Warren Tofelius, 202–395–7340
Used to collect duties/taxes when articles are withdrawn from government warehouses.

Arnold Strasser,

Acting Deputy Assistant Director For Reports Management.

[FR Doc. 81–2765 Filed 1–23–81; 8:45 am]

BILLING CODE 3110–01–M

Agency Forms Under Review

January 19, 1981.

Background

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The name and telephone number of the agency clearance officer (from

whom a copy of the form and supporting documents is available];

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;

Whether small businesses or organizations are affected;

A description of the Federal budget functional category that covers the information collection;

An estimate of the number of responses;

An estimate of the total number of hours needed to fill out the form;

An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

The name and telephone number of the person or office responsible for OMB review; and

An abstract describing the need for an uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

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DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—202-377-3627

New

Economic and Statistical Analysis
Septic System and Lateral Price Survey
Other—See SF83
Businesses or other institutions
Businesses engaging in installations and cleaning either septic systems or laterals
Sic: 769 171
Small businesses or organizations
Other advancement and regulation of commerce, 300 responses; 60 hours; $1,700 Federal costs; 1 form
Office of Federal Statistical Policy and Standard, 202-673-7974
Price data from the telephone survey will be used in the estimation of expenditures for installing and maintaining septic systems and sewer hook-ups (laterals), a significant part of national expenditures for pollution abatement and control (PAC). Expenditures for PAC, published annually by BEA, facilitate the study of the effects of such spending on real growth, inflation, and productivity. Surveying will begin upon OMB approval and end no later than three months afterwards.

Revisions

Bureau of the Census
Selected heating equipment (shipments and inventories)
MA-34N
Annually
Businesses or other institutions
Manufacturers of heating equipment
Sic: 343 369
Small businesses or organizations
Other advancement and regulation of commerce, 350 responses; 175 hours; 1 form
Office of Federal Statistical Policy and Standard, 202-673-7974
This survey has been conducted for over 30 years. The data are needed to provide continuous information to analyze and forecast long-term trends in the industry.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montie—202-633-9464

New

Energy Information Administration
Wind energy conversion systems sales survey
EIA-68
Annually
Businesses or other institutions
Manufacturers and importers of wind energy conversion systems
Sic: 999
Small businesses or organizations
Energy information, policy, and regulation, 80 responses; 120 hours; $30,200 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
To establish a comprehensive updated data base to monitor the growth in the wind energy industry. Data will also be used to assess size of machines being produced.

Energy Information Administration
Weekly coal monitoring report—general industries and blast furnaces
EIA-1
Weekly
Businesses or other institutions
Manufacturing plants known to consumer coal
Sic: 399
Small businesses or organizations
Energy information, policy, and regulation, 29,380 responses; 1 hour; $138,988 Federal costs; 1 form
Jefferson B. Hill, 202-395-7340
The EIA-1, a mandatory weekly telephone survey, will be used by DOE on a standby basis to assess the adequacy of coal supplies at coal-burning manufacturing plants during the forecasted coal miner strike. The survey will obtain weekly coal stocks, receipts, price, and consumption. The results will be published by EIA.

Energy Information Administration
Weekly coal monitoring report—coke plants
EIA-4
Weekly
Businesses or other institutions
All U.S. producers of coke
Sic: 299
Small businesses or organizations
Energy information, policy, and regulation, 3,068 responses; 1 hour; $114,748 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
The EIA-4, a mandatory telephone survey, will be used to collect data on a standby basis to assess the adequacy of coal supplies at coking plants during the forecasted coal miners' strike. The survey will produce coal and coke stocks, coal receipts, coal prices, coal

consumption, over banking, and employment data.

Energy Information Administration
Weekly telephone survey of coal burning utilities
EIA-20
Weekly
Businesses or other institutions
All U.S. coal burning electric utility companies
Sic: 491
Small businesses or organizations
Energy information, policy, and regulation, 10,400 responses; 1 hour; $123,868 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
The EIA-20, a mandatory telephone survey, will be used on a standby basis to assess the adequacy of the coal supplies of coal-burning electric utilities during the forecasted coal miners' strike. The data will also be used by ERA as a statistical backup for use in curtailment planning in cases of shortages in coal supplies. Data is also provided on coal stocks, receipts, consumption, price and generation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488

New

Food and Drug Administration
Good laborartory practice regulations for nonclinical laboratory studies
On occasion
Businesses or other institutions
Manufacturers of drugs, food additives, medical, devices, colors,
Sic: 283 807
Consumer and occupational health and safety, 6,000 responses; 6,000 hours; 1 form
Gwendolyn Pla, 395-6880
The GLP regulations are intended to assure the quality and integrity of the safety data submitted to FDA in support of the approval of regulated products. The required reports will help assure that only safe products are approved for marketing.

Revisions

Office of Assistant Secretary for Health
Evaluation of application of several existing national data collection methodologies to selected small geographic areas
nonrecurring
Individuals or households/businesses or other institutions
Pop., physic., and hosps., in 4 counties in the Florida Gulf area
Sic: 801 806 808
Health care services, 8,081 responses; 908 hours; $371,882 Federal cost; 7 forms
Gwendolyn Pla, 395-6880
The application of several NCHS data collection mechanisms to a selected small geographic area will permit NCHS to evaluate the methodologies, content and analytic capacity of the national surveys. This study will also provide an estimate of the costs and benefits from conducting these surveys on a linkage basis in the same area.

Reinstatements

Office of Assistant Secretary for Health
Survey of services provided by adolescent pregnancy programs
On occasion
Federal Government
Health or human service agencies serving pregnant adolescents, 500 responses; 250 hours
Gwendolyn Pla, 395-6880

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—202-755-5184

Revisions

Housing Programs
Coinsured mortgage record change
HUD 8084
Other—See SF83
Businesses of other institutions
Approved coinsurance mortgagees
Sic: 603 612
Mortgage credit and thrift insurance, 500 responses; 125 hours; $1,436 Federal cost; 1 form
Richard Sheppard, 202-395-6880
This report is used to notify HUD when a coinsured mortgage has been transferred from one mortgage to another. HUD needs this information to assure that each mortgage receives the proper amount of premium.

Extensions (no change)

Government National Mortgage Association
Schedule of pooled mortgages—single family loans
HUD-1706
On occasion
Businesses or other institutions
Mortgage bankers
Small businesses or organizations
Mortgage credit and thrift insurance, 9,600 responses; 4,800 hours; 1 form
Richard Sheppard, 202-395-6880
Document provides a means of identifying specific single-family mortgages in the pool and to assure that all required mortgages and related documents have, in fact, been delivered to a document custodian. This information is necessary to assure GUMA's interest in the pooled mortgages in the event of a default.

Reinstatements

Policy Development and Research
Survey of new mobile home placements
CMH-9A and CMH-9B
Monthly
Businesses of other institutions
Mobile home dealers
Sic: 527
Small businesses or organizations
Community development, 8,000 responses; 4,000 hours; $334,000 Federal cost; 2 forms
Richard Sheppard, 202-395-6880
Mobile home placement data are collected in order to measure trends in this extremely important component of low cost housing. Data from the survey are used by government agencies, trade associations, marketing agencies, and many other businesses.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—202-523-6341

New

Occupational Safety and Health Administration
Report of injuries to employees operating mechanical power presses
OSHA-18D
On occasion
Businesses or other institutions
Any employee operating mechanical power presses which result in injuries
Sic: All
Small businesses or organizations
Consumer and occupational health and safety, 400 responses; 120 hours; 1 form
Arnold Strasser, 202-395-6880
This report is necessary in order that OSHA may conduct an on-going analysis of mechanical power press injuries. The report is used to record and evaluate the causal factors of such injuries and thus monitor the effectiveness of the standard for continued use or revision when found appropriate.

Employment and Training Administration
State agency program and budget plan
ET Handbook 336
Annually
State or local governments
State employment security agencies
Sic: 944
Training and employment, 54 responses; 8,562 hours; $77,058 Federal cost; 1 form
Arnold Strasser, 202-395-6880

Provides the basis for the States' application for grant funds for the fiscal year, enables a State to plan a year's activity based upon targets issued by ETA, provides information on the State's commitment regarding planned performance for the fiscal year and provides a basis for the monitoring and review of SESA activities.

Revisions

Employment and Training Administration
National longitudinal survey of work experience (mature women) 1981
LGT-3103 (census) LGT-3101 MT-290 (ETA)
Annually
Individuals or households
Women 30-44 in 1967
Training and employment, 22,600 responses; 19,360 hours; $1,600,000 Federal cost; 3 forms
Arnold Strasser, 202-395-6880
The information provided in this survey will be used by the Department of Labor to help develop programs designed to ease the employment and unemployment problems faced by women in this age group.

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Winsor, Acting—202-426-1887

New

Federal Aviation Administration
General aviation pilot and aircraft activity survey
1800-OT. (avia. ac ar.) (gen. avia. pilot and ac act. sur.), (sur. daily summaries)
Nonrecurring
Individuals or households
General aviation pilots
Air transportation, 10,000 responses; 833 hours; $250,000 Federal cost; 3 forms
Corrinne Hayward, 202-395-7340
The Federal Aviation Act of 1958, section 311 (49 USC 1352) authorizes collection of information relative to aeronautics, and section 312 (49 USC 1353) authorizes development of long range plans and policy for development and use of navigable airspace. Information collected will be used to determine present and future general aviation needs.

Revisions

Coast Guard
Report of vessel casualty or accident
CG-2692
On occasion
Businesses or other institutions
Commercial vessel owners, agents, or persons in charge
Sic: 441 442 091
Small businesses or organizations
Water transportation, 5,000 responses; 1,500 hours; $59,300 Federal cost; 1 form
Corrinne Hayward, 202-395-7340
The information is needed to inform the Coast Guard that a vessel casualty or accident has occurred. This information is then used by the Coast Guard to initiate an investigation as required by 46 U.S.C. 239.

Coast Guard
Report of personal injury or loss of life
CG-924 E
On occasion
Businesses or other institutions
Commercial vessel owners, agents, or persons in charge
Sic: 441 442 091
Small businesses or organizations
Water transportation, 2,600 responses; 858 hours; $38,900 Federal cost; 1 form
Corrinne Hayward, 202-395-7340
The information collected is needed to inform the Coast Guard that an injury or loss of life has occurred. This information is then used by the Coast Guard to initiate an investigation as required by 46 U.S.C. 239.

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Ms. Joy Tucker—202-634-2179

Extensions (Burden Change)

•United States Customs Service
Combined rewarehouse entry and withdrawal consumption and permit
7519
On occasion
Businesses or other institutions
Importers
Small businesses or organizations
Federal law enforcement activities, 750 responses; 75 hours; 1 form
Warren Topelius, 202.395.7340
Used to assure all legal regulatory requirements met for entry of importation into U.S. Commerce.

INTERNATIONAL DEVELOPMENT ASSISTANCE

Agency Clearance Officer—Timothy P. Campbell—202-632-0084

Extensions (No Change)

Schedule D—Overseas transport, supplies to be shipped, Parts I and II
AID 1550-9 AID 1550-8
Semiannually
Businesses or other institutions
Private voluntary organizations engaged in development assistance overseas
Foreign economic and financial assistance, 70 responses; 560 hours; 2 forms
Phillip T. Balazs, 202-395-4814
The report contains information regarding the authenticity of claims for reimbursement and is also used to develop annual budget projections.

PENSION BENEFIT GUARANTY CORPORATION

Agency Clearance Officer—Robert E. Geiger—202-254-4776

New

Employer liability
On occasion
Individuals or households/businesses or other institutions
Employers who maintain terminations defined benefit pension plans
Sic: All
Small businesses or organizations
General retirement and disability insurance, 100 response; 22,400 hours; 1 form
Diane Wimberly, 202-395-6880
This regulation prescribes the rules for the determination and payment of employer liability, and rules pertaining to withdrawals from and terminations of plans to which more than one employer contributes other than multiemployer plans.

Determination of plan sufficient and termination of sufficient plans
Nonrecurring
Individuals or households/businesses or other institutions
Plan administrations of non-multiemploy defined benefit pension plans
Sic: All
Small businesses or organizations
General retirement and disability insurance, 4,400 responses; 4,400 hours; 1 form
Diane Wimberly, 202-395-6880
This regulation provides procedures for the termination of sufficient pension plans, and ensures that a participant or beneficiary with a benefit payable as an annuity under a terminating plan will receive his benefit in the annuity form specified in the plan through a funding medium that will assure timely and uninterrupted payment.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—202-389-2146

Revisions

Comprehensive evaluation of health services
10-1465 A&B
On occasion
Individuals or households
VA patients
Unassigned, 76,000 responses; 15,200 hours; 1 form
Robert Neal, 395-6880

FEDERAL HOME LOAN BANK BOARD

Agency Clearance Officer—Frank J. Crowne—202–377–6025

Extensions (No Change)

Crimes against insured institutions, report P–2
FHLBB–94
On occasion
Businesses or other institutions
Savings and loan associations insured by FSLIC
Mortgage credit and thrift insurance, 1,000 responses; 500 hours
Warren Topelius, 202–395–7340

NATIONAL FOUNDATION ON THE ARTS

Agency Clearance Officer—D. Keith Stephens—202–634–6160

New

Survey of poets eligible for literature program fellowships
Nonrecurring
Individuals or households
Poets who are listen in a directory of American poets and fiction writers
Research and general education aids, 1,400 responses; 700 hours; $10,000 Federal cost; 1 form
Diane Wimberly, 202–395–6880
The data collected will be used to analyze the reasons for a lower fellowship application rate for minority poets compared to non-minority poets. Based on the information obtained, policy changes will be recommended to encourage minorities to apply.

SELECTIVE SERVICE SYSTEM

Agency Clearance Officer—Clarence E. Boston—202–724–0846

New

Potential board member information sheet
Nonrecurring
Individuals or households
USA citizens between 18 and 60 years of age
Small businesses or organizations
Defense-related activities, 50,000 responses; 2,500 hours; $100,000 Federal costs; 1 form
Kenneth B. Allen, 202–395–3785
This proposed information sheet will be used by employees of the Selective Service System to assist the Governors of the several States in locating and nominating to the President, citizens who volunteer to serve as local and appeal board members in the administration of the Military Selective Service Act.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81–2484 Filed 1–23–81; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21889; 70–6371]

Arkansas Power & Light Co.; Proposed Transactions Related to Financing of Coal-Handling Equipment

January 16, 1981.

Notice is hereby given that Arkansas Power & Light Company ("Arkansas") First National Building, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 9(a), 10, and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated December 18, 1979 (HCAR No. 21345), Arkansas was authorized to engage in certain transactions related to the financing of coal handling equipment. Pursuant to said order, Arkansas entered into a lease with Continental Illinois National Bank and Trust Company of Chicago ("Owner Trustee" or "Lessor"), under which Arkansas was to lease from the Owner Trustee coal-handling equipment to supply processed coal to the two units of the White Bluff Steam Electric Generating Station ("Station"), under construction near White Bluff, Arkansas.

The post-effective amendment states that Arkansas held the First Closing with respect to the Phase I Equipment on December 20, 1979, and the Second Closing with respect to the Phase II Equipment on April 22, 1980; however, due to delays in construction, the company anticipates that it will not be able to hold the Third Closing with respect to the Phase III Equipment in December 1980, as originally contemplated. Accordingly, Arkansas now states that the sale, purchase, and lease of the Phase III Equipment is expected to take place in March 1981 ("Third Closing Date").

The delay in the Third Closing Date will cause other minor changes to be made in the terms of financing. In addition, the Basic Term lease rates for Phase I, Phase II, and Phase III Equipment will be changed in an amount not expected to be material.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 11, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81–2600 Filed 1–23–81; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 11564; 812–4631]

Colonial Money Market Trust; Filing of Application

January 15, 1981.

Notice is hereby given that Colonial Money Market Trust ("Applicant") 75 Federal Street, Boston, Massachusetts 02110, an open-end, diversified, management company registered under the Investment Company Act of 1940

("Act"), filed an application on March 17, 1980, and amendments thereto on December 8, 1980, and January 5, 1981, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized as a Massachusetts business trust on February 14, 1980, and that its investment adviser is Colonial Management Associates, Inc. ("Adviser"). Applicant represents that its investment objective is to provide high current income and preservation of capital through investments in high quality, short-term money market instruments.

According to the application, Applicant intends to maintain a per share net asset value of $1.00. Applicant represents that its net interest income will be declared as a dividend daily and that such interest income will consist of interest accrued or discounts earned (including both original issue and market discount) from the time of the immediately preceding declaration, less amortization of premium and the estimated expenses of Applicant applicable to that dividend period. Applicant states that it expects to distribute any net realized short-term gains once each year, although it may distribute them more frequently if necessary in order to maintain its net asset value at $1.00 per share.

As here pertinent, Section 2(a)(41) of the Act defines value to mean (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c–1 provides, in part, that no registerd investment company or principal underwriter therefore issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant requests an exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit it to value its portfolio securities using the amortized cost method of valuation. In support of its request, Applicant represents that its board of trustees has concluded that it would be in the in best interests of Applicant's potential shareholders to use the amortized cost valuation method to maintain Applicant's share value at a constant $1.00. Applicant states that the amortized cost valuation method would permit daily dividends to shareholders which would not vary as a result of realized and unrealized capital gains and losses. In addition, Applicant maintains that by using the amortized cost method of valuing its shares, investors would have the convenience of being able to value their holdings simply by knowing the number of shares which they own. Applicant submits that the issuance of the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the Act.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees of each Applicant shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated by it.

(c) Where the board of trustees believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of trustees in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the boards of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service, or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2594 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 34-17461; File No. SR-DTC-80-7]

The Depository Trust Co. Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 7, 1981, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves a modification of the procedures of The Depository Trust Company (DTC) for record date deposits. The proposed rule change is attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-80-7.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to enable DTC to continue to provide full depository services efficiently, including record date protection, for securities which are recorded for dividends or other distributions on the day the securities are deposited with DTC.

The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 by enabling DTC to continue to provide efficient depository services for record date deposits and thereby facilitating the prompt and accurate clearance and settlement of securities transactions.

Written comments have not been solicited or received. All Participants have been notified of the proposed rule change by the DTC Important Notice attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-80-7.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary fo the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2602 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11565; 812-4761]

DBL Cash-Link Fund, Inc.; Filing of Application

January 16, 1981.

Notice is hereby given that DBL Cash-Link Fund Inc. ("Applicant"), 60 Broad Street, New York, New York 10004, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on November 3, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share on the basis of the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money-market" fund organized under the laws of the State of Maryland on September 22, 1980. Applicant further states that it registered under the Act on November 6, 1980, by filing a Form N–8A Notification of Registration, together with a Form N–1 Registration Statement under the Securities Act of 1933 ("Securities Act"). Applicant's Securities Act Registration Statement has not yet been declared effective and Applicant has not yet commenced a public offering of its shares.

According to the application, Applicant's investment adviser will be Drexel Burnham Lambert Global Management Corporation ("Global"), a wholly-owned subsidiary of the Drexel Burnham Lambert Group, Inc. ("The Drexel Burnham Lambert Group"), and an affiliate of Drexel Burnham Lambert Incorporated ("Drexel Burnham Lambert"). Applicant represents that The Drexel Burnham Lambert Group has been engaged in the management of investment funds for more than 50 years and, together with its subsidiaries, currently manages more than $1 billion of assets of open-end investment companies and other institutional accounts. Applicant also states that Drexel Burnham Lambert is a large member of the New York Stock Exchange, Inc. and of other major stock, commodities and options exchanges, and together with its affiliated companies, has offices in nine countries throughout the world.

Applicant further states that it is designed as a vehicle by which customers of Drexel Burnham Lambert and other investors can place idle cash into a money market fund that invests in a diversified portfolio of high quality short-term money market instruments selected by full-time professional management. Applicant states that its investment objective is to produce the highest level of current income consistent with liquidity and preservation of capital through investments in United States government securities, debt obligations and deposits in U.S. banks and other U.S. financial institutions, such as savings and loan associations. Applicant represents that it will pursue these objectives by investing exclusively in the following types of money market instruments:

(1) U.S. government obligations issued or guaranteed as to principal and interest by the U.S. government or its agencies or instrumentalities (whether or not subject to repurchase agreements);

(2) Obligations (including certificates of deposit, time deposits, letters of credit, and bankers acceptances) of U.S. banks or other U.S. financial institutions that are members of the Federal Reserve System, the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation (including obligations of foreign branches of such members) having capital, surplus and undivided profits in excess of $100 million or total assets of $1 billion (as reported in their most recently published financial statements prior to the date of investment);

(3) Repurchase agreements pertaining to securities described in subparagraphs (1) and (2) above;

(4) Commercial paper which, when purchased, is rated A–1 by Standard & Poor's Corporation or P–1 by Moody's Investors Service, Inc., or, if not rated, is of comparable quality as determined by Applicant's board of directors; and

(5) Short-term obligations of corporations which, when purchased, are rated AA or better by Standard & Poor's or Aa or better by Moody's or, if not rated, are of comparable quality as determined by Applicant's board of directors.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that it wishes to offer its shares to the public at a constant net asset value per share of $1.00 for purposes of sale, redemption and repurchase. It asserts that the maintenance of a constant net asset value per share will afford its investors the convenience of being able to determine the value of their investment simply by knowing the number of shares they own. Applicant further represents that its board of directors has

determined that the best method currently available for valuing portfolio securities so as to maintain a $1.00 constant net asset value per share, without having to include in a daily dividend realized and unrealized short-term gains and losses on securities in the portfolio, is the amortized cost method. In accordance with this method, Applicant states that it will declare a dividend of all of its net income on a daily basis, and that unless a shareholder has elected to receive monthly distributions of dividends, such dividends will automatically be reinvested in additional shares of Applicant. It is further stated that net income will include interest accrued and discount earned, plus all realized gains and losses on portfolio securities, minus premium amortized and expenses accrued. Applicant states that because it will invest principally in short-term obligations, and will dispose of portfolio securities prior to their maturity only to a limited degree, its net asset value and daily net income will be affected by realized short-term capital gains and losses only negligibly. Furthermore, Applicant states that because the use of the amortized cost method of valuation will permit it to compute its net asset value per share without regard to unrealized short-term portfolio gains and losses, it will be able to maintain a constant net asset value per share without having to include any such unrealized gains and losses in its daily dividend. Applicant also states that although it does not expect to realize any long-term capital gains, since its investment policy will limit purchases to securities having maturities of not greater than one year from the date of purchase, any long-term gains that may be realized will be distributed annually.

Applicant contends that it is essential that it be permitted to use the amortized cost method of valuation, as described above, in order to be competitive with other money market funds. Applicant represents, in addition, that absent unusual circumstances, amortized cost value will reflect the fair value of its portfolio securities and that adherence to certain conditions specified hereafter will substantially reduce the likelihood of dilution of the assets or income of investors, or of other detrimental effects resulting from overvaluation or undervaluation of its shares.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by reference to market factors from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; redemption of shares in kind; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year (unless subject to a repurchase agreement with a maturity of one year or less), or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. If the disposition of a portfolio instrument should result in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 10, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2593 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-647]

Farmers' Union Co-operative Royalty Co.; Application and Opportunity for Hearing

January 19, 1981.

Notice is hereby given that Farmers' Union Co-operative Royalty Company (the" Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order exempting the Applicant from the registration requirements of Section 12(g) of the 1934 Act.

The application and attached exhibits state in part that:

(1) The Applicant was incorporated as a co-operative profit sharing corporation on November 13, 1928.

(2) Shares of capital stock were issued for each undivided interest in the mineral rights to forty acres of property transferred to the co-operative.

(3) No trading market exists for the capital stock and any transfer, usually in the settlement of an estate, must be submitted to and approved by the Board of Directors.

(4) Shareholders, who hold one vote regardless of the number of shares owned, receive proxy materials prior to the annual meeting which contain audited financial statements.

(5) As of December 31, 1979, the Applicant has greater than 500 shareholders and one million dollars in assets.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person no later than February 13, 1981 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2601 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11559; 811-2695]

Mariner Fund, Inc.; Filing of an Application

January 15, 1981.

Notice is hereby given that Mariner Fund, Inc. ("Applicant"), 10000 Imperial Highway A207, Downey, California 92032, which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 23, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, which is incorporated under the laws of the State of California, registered under the Act on October 18, 1976. Applicant states that the registration of 500,000 of its common shares became effective under the Securities Act of 1933 on March 31, 1978, but that it neither offered nor issued any of the shares to the public.

Applicant states that its board of directors approved a liquidation on February 29, 1980, and that all shareholders transmitted letters requesting liquidation of their respective interests in Applicant. The applicant states that Applicant's custodian, California Canadian Bank, was authorized by letter dated March 31, 1980, to distribute the assets of Applicant which, as of that date, consisted of $39,634.29, representing the interests of the 3975.32 outstanding common shares. Applicant further states that it has no shareholders and there are no shareholders to whom distributions in complete liquidation of their interests in Applicant have not been made. Applicant states that attorneys fees of $500 and C.P.A. fees of $483.50 were incurred in connection with the liquidation and were paid from Applicant's assets prior to the distribution to shareholders. Applicant further states that it has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were shareholders of Applicant.

In addition, Applicant states that, as of the date of filing the application, it had no assets (other than a $317.21 reserve retained for federal income taxes), no debts or liabilities, was not a party to any litigation or administrative proceeding and had no securities holdings. Applicant further represents that it is now engaged, and does not propose to engage in any business activity other than those necessary for the winding-up of its affairs. The application states that Applicant is currently a corporation in good standing with the State of California but that a certificate of dissolution will be filed in the near future.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be

filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2603 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17466; File No. SR-NYSE-81-1]

New York Stock Exchange, Inc.; Proposed Rule Change By

Relating to rate increases affecting Floor charges and regulatory fees. Comments requested on or before February 17, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 15, 1981, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting certain Floor charges and regulatory fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of the Proposed Rule Change

The purpose of this change is to offset in part the increased costs of supplying specific services provided by the Exchange. These services include the manpower, automation, utilities and other costs associated with providing market place facilities and services and regulatory operations. Most of the charges affected have not been increased since 1975.[1] The compound annual rate of growth of expenses over that period has been 11.5%.

The basis under the Act for the proposed rule change is Section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The fee changes are not expected to create a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not received any comments on this proposed change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (c) of Securities Exchange Act Rule 19b–4.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before February 17, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 19, 1981.

FR Doc. 81-2595 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[1] In 1977, the "new application" fee for registered representatives was increased from $50.00 to $60.00. In 1978, the charge for the NYSE Guide, looseleaf edition, was increased from $10.00 to $25.00, and the Weekly Bulletin Service was increased from $30.00 to $60.00.

[Release No. 34-17467; File No. SR-NYSE-81-2]

New York Stock Exchange, Inc.; Proposed Rule Change

Relating to rate increases affecting listing fees, and a new continuing listing fee for bonds, Comments requested on or before February 17, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 15, 1981, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization, The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting listing fees. A continuing listing fee for bonds will be introduced.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purposes of the Proposed Rule Change*

The purpose of this change is to offset in part the increased costs of supplying specific services provided by the Exchange. These services include the manpower, automation, utilities and other costs associated with providing market place facilities and services and regulatory operations. The charges affected have not been increased since 1975. The compound annual rate of growth of expenses over that period has been 11.5%.

The basis under the Act for the proposed rule change is Section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The fee changes are not expected to create a burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not received any comments on this proposed change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization costs, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before February 17, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 19, 1981.

[FR Doc. 81-2596 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21887; 70-6535]

Ohio Power Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

January 16, 1981.

Notice is hereby given that Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44701 (the "Company"), a public utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to said application which is summarized below for a complete statement of the proposed transaction.

The Ohio Power Company proposes to issue and sell, at competitive bidding, up to $100,000,000 aggregate principal amount of its First Mortgage Bonds of a new series with a maturity of not less than five years and not more than 30 years. The interest rate will be expressed in a multiple of ⅛ of 1%. The price to be paid to the Company for the Bonds shall not be less than 100% of the principal amount unless the Company shall authorize a percentage not less than 99% nor more than 102¾% of the principal amount. Both the interest rate and the price of the bonds shall be determined at the time of the sale of competitive bidding. If market conditions should not be propitious for the sale of the bonds on a competitive bidding basis, the Company proposes, subject to further authorization by this Commission to place the bonds privately. In such a case, the interest rate and price, if authorized by this Commission, would be determined by negotiation with institutional investors or with underwriters for the sale of the bonds.

Assuming a 13.5% rate of interest, the coverage ratio of net earnings to annual interest charges is 2.62 on a *pro forma* basis.

The bonds will be issued under the Mortgage and Deed of Trust dated as of October 1, 1938 between the Ohio Power Company (predecessor of Ohio Power Company) and Manufacturers Hanover Bank and Trust Company and Donald B. Herterick, Successor Trustees, as supplemented and amended from time to time and as to be further supplemented by a supplemental indenture dated as of March 1, 1981.

The supplemental indenture provides, among other things, that the terms of the bonds will preclude the Company from redeeming any such bonds at a regular redemption price prior to March 1, 1986 if such redemption is for the purpose of refunding such bonds through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to the Company of such bonds. It is expected that successful bidders for the bonds will make a public offering of them. It is proposed that the Company decide at a later time, prior to the submission of bids for the bonds, the maturity of the bonds and notify prospective bidders of its decision not less than 72 hours prior to the bidding.

The Company proposes that it publish its invitations for bids for the bonds on or about February 17, 1981 and that the bids be submitted for the bonds on or as soon after February 25, 1981 as market conditions appear to the Company to be appropriate for the sale thereof. The proposed sale of the bonds is part of an overall financing program of the Company which also contemplates that AEP will make cash capital contributions to the Company in an aggregate amount of up to $60,000,000 from time to time subsequent to January 1, 1981 and prior to June 30, 1982 (HCAR No. 21832).

The proceeds from the sale of the bonds, together with the proceeds of the cash capital contributions will be used to repay unsecured short-term indebtedness of the Company and for other corporate purposes. As of November 21, 1980, there was approximately $114,800,000 principal amount of unsecured short-term debt outstanding. It is expected that at the time of the issuance and delivery of the bonds, approximately $130,000,000 aggregate principal amount of unsecured short-term debt will be outstanding.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. Approval of The Public Utilities Commission of Ohio is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 9, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed:

Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2599 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17462; SR-PDTC-80-2]

Philadelphia Depository Trust Company ("PDTC")

January 16, 1981.

On December 8, 1980, PDTC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change which would enable pledgee banks to make collateral pledged to them by participants available for use in the stock loan program of the Stock Clearing Corporation of Philadelphia.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17362, December 10, 1980) and by publication in the Federal Register (45 FR 87284, December 16, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2597 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17471; SR-MSE-80-10]

Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 19, 1981.

On May 19, 1980, the Midwest Stock Exchange Inc., 120 South LaSalle Street, Chicago, Illinois 60603, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would require registered market makers to guarantee execution on all 100 share agency orders in accordance with the procedures set forth in Article XX, Rule 34 of the MSE Rules relating to the "BEST" SYSTEM. In addition, the proposal would delete the prohibition on a registered market maker receiving exempt credit for transactions in his assigned securities effected in other markets, and, instead, would require registered market makers to effect on the MSE at least 50 percent of their total quarterly share volume which creates or increases positions in their market maker accounts.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16845, May 27, 1980) and by publication in the Federal Register (45 FR 37788, June 4, 1980). No comments have been received by the Commission with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and in particular, the requirements of Section 6 and the rules and regulations thereunder, in particular Section 6(b)(5) in that the proposed rule change will remove impediments to a free and open market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2592 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11569; 812-4681]

Sentinel Group Funds, Inc. et al.; Filing of Application

January 19, 1981.

In the matter of Sentinel Group Funds, Inc., One Exchange Place, Jersey City, New Jersey 07302, and Sentinel Advisors, Inc., and Equity Services, Inc.; National Life Drive, Montpelier, Vermont 05602, [812-4681].

Notice is hereby given that Sentinel Group Funds, Inc. ("Fund"), a series company which is registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), Sentinel Advisors, Inc. ("Adviser"), and Equity Services, Inc. ("Distributor") (hereinafter Fund, Adviser, and Distributor are referred to as "Applicants"), filed an application on May 15, 1980, and an amendment thereto on December 22, 1980, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder to the extent necessary to permit sales of Fund's common stock series at net asset value without imposition of a sales load to the trustees of a tax qualified employee benefit plan for employees of certain affiliated persons of Applicants. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Fund is a series company organized under the laws of Maryland and that it maintains a continuous public offering of each of its five series of stock, through Distributor, at a public offering price equal to net asset value plus a sales load which varies with the size of the purchase. Applicants state that dividends or distributions of capital gains may be reinvested in Fund shares without the imposition of a sales load.

According to the application, Adviser and Distributor are both wholly-owned subsidiaries of National Life Investment Management Company, Inc., which is a wholly-owned subsidiary of National Life Insurance Company ("National"), a mutual life insurance company. Applicants state that National is

licensed to do business in all 50 states and the District of Columbia, has approximately $10 billion of life insurance in force and $2.3 billion of assets as of December 31, 1979. Employees of National and its present subsidiaries and any subsequently formed subsidiaries are hereinafter collectively referred to as "National Employees".

Applicants state that as of June 30, 1980, National had 896 employees of which 667 participated in the National Life Progress Sharing Plan ("Plan"), an employee profit sharing plan qualified under Section 401(a) of the Internal Revenue Code of 1954. Applicants propose to permit trustees of Plan to purchase shares of Fund's common stock series at net asset value, without imposition of a sales load, on behalf of National Employees participating in the Plan. Applicants state that the trustees will continue to hold the shares purchased under the Plan and the distributions on those shares will be reinvested at net asset value in shares of Fund's common stock series. According to the application, the trustees will agree not to resell shares acquired in the Plan except by repurchase or redemption by or for the account of the Fund.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person, except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus.

Applicants state that the sale of Fund shares to the Plan at net asset value may conflict with the provisions of Section 22(d) of the Act and Rule 22c–1 thereunder. Applicants assert that an argument can be made that the sale of Fund shares to the Plan at net asset value is permitted by Rule 22d–1(f) under the Act which, in pertinent part, generally permits elimination of sales loads upon the sale, pursuant to a uniform offer described in the prospectus, to an employee benefit plan which is qualified under Section 401 of the Internal Revenue Code. Applicants submit that despite interpretive advice from the staff of the Commission relating to "uniform offers" which would possibly permit the proposed sales of Fund shares to the Plan at net asset value, it is not clear that sales to National Employees covered by the Plan at net asset value would meet the requirements of Rule 22d–1(f) under the Act. Applicants have determined to seek an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from Section 22(d) of the Act and Rule 22d–1 thereunder.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of their requested order of exemption, Applicants submit that sale of Fund common stock series shares at net asset value to the trustee of the Plan on behalf of National Employees is supported by policy considerations; namely, such sales should result in demonstrable economies in sales effort and sales related expenses as compared with other sales and would not be unjustly discriminatory and would therefore be consistent with the purposes of Section 22(d) of the Act. Applicants state that no individual or in-person group sales solicitations or presentations concerning the Plan will be made and that no additional selling effort or literature will be developed in relation to the Plan, with only existing sales brochures being used. All National Employees will receive, at least annually, a notice from their employers concerning the Plan. The notice will be furnished at the employer's expense and will fully detail the status of both employer and employee contributions to the Plan, allocations to the purchase of shares if such is the case and what accumulations, if any, have been added to the account. In addition, each Plan participant will be furnished a copy of Fund's prospectus at least annually.

Applicants further submit that Distributor's affiliation to the other National affiliates is the basis for a unique relationship which can be expected to result in economies of sales effort and sales related expenses which justify elimination of all sales charges on Fund's shares purchased by the trustees in the Plan and that the sales will not be discriminatory as to other employee benefit plans or other purchasers of Fund shares. Applicants argue that the following features of the Plan are expected to give rise to economies of scale in sales effort and sales related expenses: (1) there will not be any personal solicitation of participants by the Distributors, their representatives or other broker-dealers; (2) periodically (bi-monthly), shares being purchased on behalf of all participants in the Plan will be aggregated by the trustees of the Plan and payment for such shares will be made by a single check; (3) distributions on the Fund's shares will be automatically reinvested in additional shares at net asset value; (4) all eligible employees will receive at least annually, at the expense of their employer, notice of the availability of the Plan; and (5) the increased size of each purchase, which will be the aggregate of all of the individual subaccounts, will reduce administrative expenses. In addition, all expenses relating to the Plan, including thie initial and all subsequent subaccountings, will be absorbed by National which will utilize its own computer facilities. Additionally Applicants state that such investments promote employee incentive, good will and loyalty and that National Employees can be expected to have some familiarity with the Fund which should further reduce the necessary sales effort. Finally, Applicants assert that the granting of the requested order of exemption is necessry or appropriate in the public interest and consistent with the protection of investors and the puposes fairly intended by the policy and provisions of the Act.

Notice is futher given that any interested person may, not later than February 11, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request

or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2593 Filed 1-23-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80.152]

Texas Offshore Port License Application

AGENCY: Coast Guard, DOT.

ACTION: Notice of deepwater port license application.

SUMMARY: The Secretary of Transportation has determined the information received in the deepwater port license application from Texas Offshore Port, Inc., submitted on December 30, 1980 is sufficient to permit processing. Deficiencies discovered during processing may be remedied by further action of the Applicant.

DATE: The Coast Guard desires public comment on the proposed deepwater port described herein at the earliest possible time. A comment closing deadline will be established at a later time in the application review process and published in a future Federal Register notice.

ADDRESS: The office of the Coast Guard Application Review Staff processing the TOP application is located at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Capt. G. P. Sherburne, Manager, Deepwater Port Application Review Staff, Office of Marine Environment and Systems, U.S. Coast Headquarters, Washington, D.C. 20593 (202) 472-5052.

SUPPLEMENTARY INFORMATION: Under section 5(c)(1) of the Deepwater Port Act of 1974 (Act), 33 U.S.C. 1504(c)(1), notice is hereby given that Texas Offshore Port, Inc. (TOP), 824 Adams Building, Bartlesville, OK 74004, has filed an application with the Coast Guard for all Federal authorizations required for a license to own, construct, and operate a deepwater port off the coast of Texas. TOP is a consortium composed of Dow Chemical Co., Phillips Investment Co., Continental Pipe Line Co., and Seaway Pipeline, Inc.

DESCRIPTION: The proposed deepwater port will be located in the Gulf of Mexico about 12 miles offshore from Freeport, Texas in a water depth of about 71 feet.

The focal point of this port will be a manned offshore platform to accommodate metering, meter proving, scraper operations, communications equipment, pipeline end manifold, VTS radar system, sick bay and quarters for port personnel. The focal point is located at 28°42'7.27" N. latitude and 95°19'59" W. longitude.

The port is designed to handle about 500,000 barrels of crude oil throughput per day, using vessel discharge pumping without offshore booster pumps at a rate of about 40,000 barrels per hour at 100 psi. The application is for one single point mooring (SPM), although skeletal information has been provided for a hypothetical second SPM. Tankers with an approximate maximum draft of 60 feet will be able to unload at the SPM. Some lightering of deeper draft tankers may be required prior to mooring. Vessels calling at the port will moor by the bow and have floating oil transfer hoses from the SPM attached to the vessel for discharge of cargo. While moored, a vessel will weather vane 360° around the SPM buoy to maintain a heading of least resistance to the elements when engaged in oil transfer operations.

A submarine pipeline 56" in diameter will connect the SPM to the offshore platform and the platform to the onshore storage facilities. This pipeline will follow the route originally proposed for the Seadock facility. The pipeline will terminate at the Seaway Pipeline, Inc. storage facility at Freeport, Texas which currently has 4.2MM barrels capacity. The application also calls for the construction of three additional storage tanks (a total of 1.5MM barrels additional capacity).

SAFETY ZONE DESIGNATION: Under Section 10(d) (1) of the Act, within 30 days, a safety zone will be designated around and including the proposed deepwater port, for the purpose of navigational safety.

COMPETING APPLICATIONS: Under Section 5(d) (1) and (2) of the Act, the application area encompassing the Texas Offshore Port site is that area contained within a circle having a 10.9 nautical mile radius and centered at latitude 28° 42' 7.27" N. and longitude 95° 19' 59" W., less that area contained within existing shipping safety fairways and fairway anchorsages as shown on National Ocean Survey Chart No. 11300.

Any person interested in applying for a license for the ownership, construction, and operation of a deepwater port within the designated area described above must file with the Commandant (G-WF/44) at the address listed at the beginning of this notice, a notice of intent to file an application on or before March 27, 1981 and a completed application on or before April 27, 1981.

ADJACENT COASTAL STATE DESIGNATION: Under section 9(a)(1) of the Act, the State of Texas is hereby designated as an adjacent coastal State (ACS). Any other state which desires such designation must comply with section 9(a)(2) of the Act and 33 CFR 148.217. Compliance in the case of the TOP application requires requests for ACS designation to be made by February 9, 1981.

NOTICE OF HEARING: Any person who desires to receive notices of public hearing held in connection with the processing of this application may submit a written request therefor to the Commandant (G-CMC/24) at the address listed at the beginning of this notice.

APPLICATION AVAILABILITY: A copy of the TOP application, except trade secrets and confidential information for which protection from disclosure under section 14 of the Act and 33 CFR 148.219, is available for inspection and copying at the document inspection facility of the Office of the Commander, Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, and in Room 2418 at the address listed at the beginning of this notice. A copy of the application may also be viewed at the Applicant's offices at 824 Adams Building, Bartlesville, OK 74004, and at the Freeport Public Library, 410 Brazosport Boulevard, Freeport, Texas 77542.

(33 U.S.C. 1504); 49 CFR 1.46.

Dated: January 19, 1981.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 81-2799 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 81-ASW-1AC]

Bell Helicopter Textron Model 412; Aircraft Certification and Availability of Documents

The formal type certification process of the Bell Model 412 Transport Category B helicopter has been

completed. Aircraft Type Certificate No. H4SW has been amended to include approval of the Model 412 helicopter.

The Director of the FAA Southwest Region has conducted a review of the issues involved in the Model 412 type certification program and the findings of the FAA certification team. He has also reviewed and discussed with his staff a document entitled "Decision Basis for Type Certification of the Bell Helicopter Textron Model 412." Based on this review, the Director approved the amendment of Aircraft Type Certificate H4SW to include the Model 412.

A copy of the "Decision Basis for Type Certification of the Bell Helicopter Textron Model 412" is on file in the FAA Rules Docket. The bulk of the "Decision Basis" reviews the purpose, structure, conduct, and significant highlights of the certification program wherein Bell was required to demonstrate compliance with the certification basis for the Model 412. It provides a brief overview of the type inspection test results and a compliance checklist showing the means of compliance with each paragraph of the certification basis. Other appendices and attachments pertaining to the Model 412 type certification program are also included in the document. The document is available for examination and copying at the FAA Rules Docket, Room 916, 800 Independence Avenue, SW, Washington, D.C. Copies of the report may be obtained from the Office of the Director, FAA Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

Issued in Forth Worth, Texas, on January 13, 1981.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 81-2406 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Broome County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Broome County, New York.

FOR FURTHER INFORMATION CONTACT: Victor E. Taylor, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 9th floor, Clinton Avenue & North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct the final link of Interstate Route 88 from existing I-88 in the vicinity of Sanitaria Springs to existing I-81 in the vicinity of Binghamton. This link is necessary to form an Interstate Connection between I-81 and I-88 and thereby complete I-88 between Binghamton and Schenectady.

The NYSDOT previously submitted a final EIS for the proposed project. This EIS has been withdrawn to permit further development of alternatives, and a new EIS is under preparation. This new EIS will consider all feasible location alternatives, including taking no action and will consider various design alternatives within these locations.

The proposed project has been under study since 1968 and there have been public hearings held, as well as contact with interested public and private agencies, organizations, and individuals. The EIS preparation for the proposed project will continue those contacts developed in previous project activities, and their views will be solicited. Affected Federal and State agencies will be invited to participate in the development of this project. A community participation program has been established which will provide individuals and groups from all elements of the community the opportunity for public involvement. A public hearing will be held. Because of the previous and ongoing public involvement in the developent of the proposed project, no formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Environmental Impact Statement should be directed to the FHWA at the address provided above.

Issued on January 15, 1981.

Victor E. Taylor,

Division Administrator, Albany, New York.

[FR Doc. 81-2405 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Linn County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for widening an existing highway in Yamhill County, Oregon.

FOR FURTHER INFORMATION CONTACT: Paul V. Riedl, Environmental Coordinator, Federal Highway Administration, Equitable Center, Suite 100, 530 Center Street NE., Salem, Oregon 97301. Telephone: (503) 378-3845.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement on a proposal to expand the East McMinnville Interchange to Airport Road section of the Salmon River Highway (State Route 39/Oregon 18), from two lanes to four, with a continuous left turn median. The proposed action is intended to provide additional capacity for anticipated growth in traffic volumes. The length of the project is 2.2 miles; beginning at M.P. 46.3 and ending at M.P. 48.5.

Alternatives under consideration include (1) taking no action, (2) widening the existing highway on both sides, (3) widening on the southerly side only, and (4) other feasible alternatives that may develop during the project study.

Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. As necessary public meetings will be held and, in addition, a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, "Reconstruction of East McMinnville Interchange to Airport Road of Salmon River Highway."

The provisions of OMB Circular No. A-05 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program issued January 5, 1981.

E. J. Valach,

Program Development Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 81-2406 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Yamhill County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for widening an existing highway in Linn County, Oregon.

FOR FURTHER INFORMATION CONTACT: Paul V. Riedl, Environmental Coordinator, Federal Highway Administration, Equitable Center, Suite 100, 530 Center Street NE., Salem, Oregon 97301. Telephone: (503) 378–3845.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement on a proposal to reconstruct the existing 2, 3, and 4 lane Queen Avenue-Tangent section of the Albany-Junction City Highway into a 5-lane highway. The proposed action will provide four traffic lanes and a continuous left turn refuge to improve traffic flow and safety. The project is 5.6 miles long, between M.P. 3.0 and M.P. 8.6.

Alternatives under consideration include (1) taking no action, (2) a four lane facility with channelized intersections, (3) a variable width facility providing two to four travel lanes with channelized intersections at various locations, and (4) other feasible alternatives that may develop during the project study.

Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. As necessary public meetings will be held and, in addition, a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, "Reconstruction of Queen Avenue-Tangent Section of Albany-Junction City Highway."

The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program issued January 5, 1981.

E. J. Valach,

Program Development Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 81–2407 Filed 1–23–81; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 79–05; Notice 2]

Plan for Highway Safety Research, Development and Demonstrations (Section 403 of Title 23, U.S.C.) for Fiscal Years 1980–1984

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of revised plan and request for public comment.

SUMMARY: The National Highway Traffic Safety Administration, (NHTSA) has revised its comprehensive Five-Year 403 Program Plan for Highway Safety Research, Development and Demonstration activities authorized under Section 403 of Title 23, U.S.C. (hereafter referred to as the Five-Year 403 Program Plan). This document describes research, development and demonstration (RD&D) plans for Fiscal Years 1980 through 1984 for the major highway safety program areas and describes the significant program support areas. NHTSA invites written comments from individuals and groups with an interest in highway safety for its use in preparing the next revision of the Five-Year 403 Program Plan.

DATE: Comments suggesting revisions to the Fiscal Year 1982 portion of the Five-Year 403 Program Plan must be submitted by May 1, 1981. Comments received after May 1, 1981 will be given consideration in the revision of the Plan for Fiscal Year 1983 and beyond.

ADDRESS: Comments should refer to the docket number and be submitted to: NHTSA, Docket No. 79–05, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Because of its length, the Five-Year 403 Program Plan is not being published in the Federal Register. Individuals interested in obtaining single copies of the Plan may contact Ms. Eleanor Kitts, Office of Management Services, National Highway Traffic Safety Administration, Room 4423, 400 7th Street, S.W., Washington, D.C. 20590. Telephone: (202) 426–0874.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Delahanty, Chief, Special Projects Planning Staff, Plans and Programs, National Highway Traffic Safety Administration, Room 5212, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 426–1570.

SUPPLEMENTARY INFORMATION: The revised Five-Year 403 Program Plan represents the results of an ongoing planning process between the NHTSA and all sectors of the U.S. highway safety community, both governmental and private. This process was initiated by the agency in 1979 when it published and distributed the proposed Plan (March 30, 1979; DOT–HS–804–031) to give the safety community and the general public an opportunity to review NHTSA's highway safety programs and formally participate in the decisionmaking process during the early phases of planning. To facilitate this interaction between NHTSA and the highway safety community, the Transportation Research Board (TRB) of the National Academy of Sciences conducted a National Conference under NHTSA's sponsorship for researchers, State and local government officials, and other interested persons at the Dulles Marriott Conference Center in Virginia in April 1979. The assessments and recommendations of the Dulles conferees were reported to the agency and published by TRB in the Conference Proceedings (December 1979; DOT–HS–804–231).

In May 1980, NHTSA formally responded to each recommendation in a report issued to the Senate Appropriations Committee (May 1980; DOT–HS–805–688). Subsequently, each of the program area plans was revised to reflect a synthesis of NHTSA's viewpoints with the recommendations from outside experts and users of 403 products, and to respond to the national needs identified by the entire highway safety community as presented to NHTSA at the conference and elsewhere.

The 5-year Plan includes an introductory section which discusses the major highway safety issues facing the nation, policies adopted by the agency to deal with these issues, and administrative improvements which have taken place since the National Highway Safety RD&D Conference in April 1979. The Plan identifies eight major highway safety programs areas: (1) 55 MPH Noncompliance and Other Unsafe Driving Acts; (2) Occupant Restraints; (3) Alcohol and Drugs; (4) Pedestrian/Bicycle/Pupil Transportation; (5) Driver Licensing; (6) Motorcycle/Moped; (7) Young Driver; and (8) Emergency Medical Services. It also identifies five program support areas: (9) State Traffic Records; (10) State Program Management; (11) Traffic Law Adjudication; (12) Police Traffic Services; and (13) the National Driver Register. Each of the 13 area plans includes: (1) a background discussion, (2) research approach, (3) planned projects and potential final products, and (4) anticipated funding levels of

each program area for each year of the Plan.

As the safety picture changes over time, NHTSA will continue to work with the safety community to keep this Plan up to date.

All comments will be available for examination on a continuing basis in the docket at the above address.

Issued on: January 19, 1981.

Barry Felrice,

Associate Administrator for Plans and Programs.

[FR Doc. 81-2375 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

Bus Procurement Advisory Committee; Establishment

AGENCY: Urban Mass Transportation Administration.

ACTION: Notice.

Notice is hereby given of the establishment of the Bus Procurement Advisory Committee under the sponsorship of the Urban Mass Transportation Administration (UMTA). The objectives of the Committee include: identifying those specifications, procurement and administrative policies which are either contrary to the overall goals of the transit program, conflict with energy conservation objectives, or add to the original or operating costs of bus vehicles; investigating, reporting on and/or recommending technical specifications and a procurement policy for buses which will emphasize standardization, where possible, as well as performance, cost-effectiveness, and life-cycle costs; and considering ways to insure the cost-effectiveness, reliability, maintainability and operability of lifts and other equipment to improve access by the elderly and handicapped. The committee will be responsive to issues of particular interest to UMTA and may conduct inquiries, studies and seminars in cooperation with interested groups in the Federal government, the private sector and State and local governments.

All meetings of the Committee shall be open to the public. Notice of time, place, and a summary agenda will be published in the Federal Register at least 15 days prior to the meeting date for all meetings. Shorter notice may be given in emergency situations, which will be explained in the Notice.

Attendance is open to the interested public, though limited to the space available. With the approval of the Chairman, members of the public may speak at the meeting in accordance with procedures established by the committee. A written statement may be filed with the committee at any time. Additional information may be obtained from Gary C. Flynn, Office of Program Analysis, UMTA, Room 9305, 400 Seventh St., S.W., Washington, D.C. 20590; telephone: (202) 472-6997.

Issued in Washington, D.C. on January 16, 1981.

Theodore C. Lutz,

Administrator.

[FR Doc. 81-2382 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 16
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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, January 29, 1981 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Certification
Advisory Opinion 1980-128
Judith K. Richmond, Assistant General Counsel, Chamber of Commerce of the United States
Appropriations and Budget
Pending Legislation
Classification actions
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-0124-80 Filed 1-22-81; 11:10 am]
BILLING CODE 6715-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

January 21, 1981.

TIME AND DATE: 10 a.m., January 28, 1981.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the Division of Public Information.

Power Agenda—478th Meeting, January 28, 1981, Regular Meeting (10 a.m.)

CAP-1. Project No. 2088, Oroville-Wyandotte Irrigation District
CAP-2. Docket No. ER81-166-000, Missouri Utilities Co.
CAP-3. Docket No. ER81-19-000, Tapoco, Inc.
CAP-4. Docket Nos. ER80-244 and ER80-479, Florida Power & Light Co.
CAP-5. Docket No. EL80-19, Massachusetts Municipal Wholesale Electric Co. v. Power Authority of the State of New York; Docket No. EL80-24, Connecticut Municipal Electric Energy Cooperative v. Power Authority of the State of New York
CAP-6. Docket No. ES80-79, Montana Dakota Utilities Co.
CAP-7. Docket Nos. ER77-354 and ER78-14, Missouri Utilities Co.

Miscellaneous Agenda—478th Meeting, January 28, 1981, Regular Meeting

CAM-1. Docket No. RM80-48, definition of agricultural use in section 282.202(a) of the Commission's regulations on incremental pricing
CAM-2. Docket No. RM79-76 (Texas—6), high-cost gas produced from tight formations
CAM-3. Docket No. RA80-92, Wedge Service Station, Inc.
CAM-4. Docket Nos. RA81-6-000 and RA81-7-000, Self-Serve Chevron and Ron Cromwell Chevron

Gas Agenda—478th Meeting, January 28, 1981, Regular Meeting

CAG-1. Docket No. TA81-1-16-001 (PGA81-1), National Fuel Gas Supply Corp.
CAG-2. Docket No. TA81-1-53 (PGA81-1), Kansas-Nebraska Natural Gas Co., Inc.
CAG-3. Docket No. RP81-26-000, Grand Bay Co.
CAG-4. Docket Nos. RP75-105 and RP76-94 (offshore plant depreciation rate), Columbia Gulf Transmission Co.
CAG-5. Docket No. CI81-25-000, Union Oil Co. of California; Docket No. CI61-1562 (CI62-326), Gulf Oil Corp.; Docket No. CI73-810, Amoco Production Co.; Docket No. CI73-102 (CI62-326), McCulloch Oil & Gas Corp.; Docket No. CI78-664, Exxon Corp.; Docket No. CI80-389, HNG Oil Co. (operator), et al.; Docket No. CI81-28-000, Chevron U.S.A. Inc.; Docket No. CI81-16-000, Union Oil Co. of California; Docket No. CI80-400, Shell Oil Co.; Docket Nos. CS74-265, et al., Whitaker Enterprises, Inc.; Docket No. CI80-401, Quintana Offshore, Inc.; Docket Nos. CI79-282, et al., Tenneco Exploration, Ltd., et al.
CAG-6. Docket No. CI79-348, Transco Exploration Co.
CAG-7. Need for additional language in future temporary and permanent certificates of public convenience and necessity as a result of section 601(a)(1)(b) of the Natural Gas Policy Act of 1978
CAG-8. Docket No. CP77-337, Algonquin Gas Transmission Co.
CAG-9. Docket No. RP72-99 and TC79-6 (compensation issues), Transcontinental Gas Pipe Line Corp.
CAG-10. Docket No. CP81-57-000, Northern Natural Gas Co., Division of Internorth, Inc.
CAG-11. Docket No. ST80-314, Producers Gas Co.

Power Agenda—478th Meeting, January 28, 1981, Regular Meeting

I. Licensed Project Matters

P-1. Project No. 2780, Solano Irrigation District; Project No. 3220, Napa County, Calif.

II. Electric Rate Matters

ER-1. Docket Nos. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio
ER-2. Docket No. ER80-5, Minnesota Power & Light Co.
ER-3. Docket No. ER80-752, Middle South Services, Inc.
ER-4. Docket No. ER79-616, Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

Miscellaneous Agenda—478th Meeting, January 28, 1981, Regular Meeting

M-1. Reserved
M-2. Reserved
M-3. Docket No. RM81- , Interstate Pipeline Blanket Certificates for routine transactions—procedural rule
M-4. Docket No. RM81- , discontinuance of production reports and computer related forms 314-B and 108, reinstitution/revision of producer filing requirements

Gas Agenda—478th Meeting, January 28, 1981, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket No. RP80-61, Consolidated Gas Supply Corp.

II. Producer Matters

CI-1. Reserved

III. Pipeline Certificate Matters

CP-1. Docket No. CP81-148-000, Boston Gas Co.
CP-2. Docket No. CP80-572, Montana-Dakota Utilities Co.; Docket No. CP80-571, Montana-Dakota Utilities Co.; Docket No. CP80-570, Frontier Gas Storage Co.
CP-3. Docket No. CP80-398, American Bakeries Co.

CP–4. Docket No. CP79–464, Florida Gas Transmission Co. and Continental Resources Co.; Docket No. CI73–676, et al., Florida Exploration Co.
CP–5. Docket Nos. CP75–140, et al., Pacific Alaska LNG Co., et al.; Docket Nos. CP74–160, et al., Pacific Indonesia LNG Co., et al.; Docket No. CI78–453, Pacific Lighting Gas Development Co.; Docket No. CI78–452, Pacific Simpco Partnership
CP–6. Docket Nos. CP76–285, et al., Mountain Fuel Resources, Inc.
CP–7. Docket No. CP74–192 (remand), Florida Gas Transmission Co.

Lois D. Cashell,

Acting Secretary.

[S–122–81 Filed 1–22–81; 10:14 am]

BILLING CODE 6450–85–M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., Thursday, January 29, 1981.

PLACE: 1700 G Street NW., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

MATTERS TO BE CONSIDERED:

Service Corporation Activity—First Federal Savings & Loan Association of Charlotte, Charlotte, North Carolina
Merger; Maintenance of Branch Offices; Cancellation of Membership and Insurance and Transfer of Stock—American Federal Savings & Loan Association of Erlanger, Erlanger, Kentucky *into* Columbia Federal Savings & Loan Association of Covington, Fort Mitchell, Kentucky
Voluntary Termination of Insurance of Accounts and Withdrawal From Bank Membership Wilson Savings & Loan Association, Wilson, North Carolina
Increase of Accounts of an Insurable Type Through Merger of Eagle Federal Savings & Loan Association of Worthington, Worthington, Ohio *into* The First Federal Savings & Loan Association of Cleveland, Cleveland, Ohio
Permission to Organize a New Federal—Jose Manuel Casanova, et al., Hialeah, Florida
Permission to Organize a New Federal—Weldon J. Hays, et al., The Colony, Texas
Application For Merger—Guaranty Federal Savings & Loan Association of Pocatello, Pocatello, Idaho *into* First Federal Savings & Loan Association of Twin Falls, Twin Falls, Idaho
Request for a Commitment to Insure Accounts—Franklin Savings & Loan Association (in organization) Southfield, Michigan
Recommendation That—Richard B. Pow be Designated as a Supervisory Agent for the Federal Home Loan Bank of Pittsburgh
Branch Office Application—Los Angeles Federal Savings & Loan Association, Los Angeles, California

No. 442, January 22, 1981.

[S–0123–80 Filed 1–22–81; 10:34 am]

BILLING CODE 6720–01–M

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 11 a.m., January 26, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: Implementation of "Fifty-Mile Rule" at East and Gulf Coast Ports.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–126–81 Filed 1–22–81, 12:42 pm]

BILLING CODE 6730–01–M

5

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 3724, January 15, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., January 21, 1981.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

2. Implementation of "Fifty-Mile Rule" at East and Gulf Coast Ports.

[S–0125–80 Filed 1–22–81; 12:42 pm]

BILLING CODE 6730–01–M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

84966 12-24-80 / Screwworms; permitted pesticides

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981.

Federal Register

Monday
January 26, 1981

Part II

Department of Transportation

Federal Highway Administration

Motor Carriers; Minimum Levels of Financial Responsibility

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-94; Notice No. 81-1]

Minimum Levels of Financial Responsibility for Motor Carriers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish minimum levels of financial responsibility for for-hire motor carriers of property involved in interstate or foreign transportation and for motor carriers transporting hazardous materials in intrastate or interstate commerce, in accord with the provisions of section 30 of the Motor Carrier Act of 1980, and further provides for the implementation and enforcement of the proposed standards.

DATE: Comments must be received on or before April 13, 1981.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and should be submitted to Room 3402, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Bureau of Motor Carrier Safety, (202) 426-9767; or Mr. Gerald M. Tierney, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has determined that this document contains a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory evaluation and an initial regulatory flexibility analysis are available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

Background

On July 1, 1980, the President signed the Motor Carrier Act of 1980, Pub. L. 96-296. Section 30 of the Act prescribes that minimum levels of financial responsibility be set for for-hire motor carriers of property involved in interstate or foreign transportation and for motor carriers transporting hazardous materials in intrastate or interstate commerce. The Act limits the applicability of these requirements to motor vehicles having a gross vehicle weight rating of 10,000 pounds or more.

The Act establishes minimum dollar-levels of financial responsibility that must be met by affected persons 1 year from the date of enactment of the Act unless the Secretary of Transportation issues regulations that require higher or lower levels.

The Secretary's authority to reduce those levels is limited. The statute precludes the Secretary from reducing the minimum levels below specified levels and provides that the authority to impose reduced levels applies only to a period of up to 2 years beginning either on (1) the effective date of the rule, provided that the rule is made effective within 1 year after enactment, or (2) the 366th day after enactment, provided the rule is made effective 1 year after enactment or later. This period of time is herein referred to as a 2-year "phase in period."

The purpose of the financial responsibility provisions of the Motor Carrier Act of 1980 is to create incentives for the motor carrier industry to focus on the safety aspects of highway transportation and to assure the general public that a motor carrier maintains an adequate level of financial responsibility sufficient to satisfy claims covering public liability and environmental restoration liability. The legislative history of section 30 indicates a congressional belief that increased financial responsibility will lead to improved safety performance as unsafe motor carriers will incur higher premiums than safe carriers, or will be unable to obtain coverage. The Congress expected that motor carriers which maintain high levels of safety would be evaluated in a favorable light by insurance companies. Since generally the premiums that insurance companies actually charge are directly related to the insured's record of loss experience, the minimum levels of financial responsibility for public liability, property damage, and environmental restoration required in the Act should initiate a new and major focus on motor carrier safety.

The BMCS published an advance notice of proposed rulemaking (ANPRM) in the Federal Register on Thursday, August 28, 1980 (45 FR 57676). An errata notice appeared in the September 8, 1980 issue of the Federal Register (45 FR 59177) to correct two words that originally appeared on 45 FR 57676. The ANPRM set forth a series of 23 questions for the purpose of gathering information aimed at assisting the FHWA in the promulgation of reasonable and comprehensive regulations in the area of motor carrier financial responsibility and in the development of a report for the Secretary of Transportation to submit to the Congress. The following is a discussion of the proposed rules developed by the BMCS.

Purpose, Scope and Applicability (§§ 387.1 and 387.3)

These proposed rules would apply only to motor vehicles with a gross vehicle weight rating of (GVWR) 10,000 pounds or more. Congress, in paragraph (f) of section 30 of the Motor Carrier Act of 1980, specifically exempted vehicles weighing less.

The minimum levels of financial responsibility, covering public liability and environmental restoration liability, as proposed in this document, would apply to for-hire motor carriers operating motor vehicles transporting non-hazardous property in interstate or foreign commerce. The term for-hire motor carrier includes motor carriers operating under certificate or permit issued by the Interstate Commerce Commission (ICC), certain carriers involved in intercorporate hauling, which is discussed further below, and for-hire carriers that are exempt from the ICC's economic regulations (49 U.S.C. 10523, 10525, and 10526). It was the intent of Congress to exclude private carriage from these requirements when transporting non-hazardous materials (H.R. Rep. 96-1069, p. 43).

One of the issues to be resolved in this rulemaking is the scope of this private carriage exemption. For reasons noted below in the discussion of the definition of "for-hire carriage," the proposed rule would apply to intercorporate hauling, including certain hauling between corporations with 100 percent common ownership.

The statute establishes a minimum financial responsibility requirement of $750,000 for motor carriers transporting non-hazardous property. However, the statute authorizes the Secretary to lower this minimum level to as low as $500,000 for a phase in period of up to 2 years upon finding that such a reduction will not adversely affect public safety and will prevent a serious disruption in transportation service. As described below, the proposed rule would partially utilize this reduction authority. The statute also authorizes the Secretary to establish requirements at levels above $750,000.

The proposed minimum levels of financial responsibility, covering public liability and environmental restoration liability, as set forth in these proposed rules, would also apply to for-hire and

private motor carriers operating motor vehicles transporting hazardous materials, hazardous substances and/or hazardous wastes, in interstate or intrastate commerce. Section 30 of the Act distinguishes between different types of hazardous materials and prescribes $5 million minimum levels of financial responsibility for the transportation of specified hazardous materials. The proposed rule would require $5 million in financial responsibility for the transportation of:

(1) Hazardous substances, as defined by the Administrator of the Environmental Protection Agency in 40 CFR Parts 110, 116, and 261, when transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons;

(2) In bulk Class A explosives, poison gas, liquefied gas, or compressed gas (the term "in bulk" as proposed to be defined is discussed in detail in the definition section of this preamble); and

(3) Large quantities of radioactive materials. That which constitutes a large quantity of radioactive material is defined in 49 CFR 173.389(b).

It should be noted that the references to 40 CFR Parts 110, 116, and 261 contemplate automatic incorporation into these rules of any changes in those regulations. Thus, as contemplated by the statute, should the Environmental Protection Agency add an item to its hazardous substance or waste lists at 40 CFR Parts 110, 116, or 261, motor carriers would be responsible for meeting the $5 million financial responsibility requirements while transporting those materials in sufficient quantities. The proposed rule would also treat any change in the Department's present definition of a large quantity of radioactive material as affecting motor carrier responsibility under these rules. Comments on this aspect of the proposed rule would be welcome.

The minimum level of financial responsibility mandated by Congress for the motor carriers of the hazardous materials noted above is $5 million. However, the statute authorizes the Secretary to reduce the minimum level to as low as $1 million for a phase in period of up to 2 years if it is determined that such a reduction will not adversely affect public safety and will prevent a serious disruption in transportation service, and this proposal would make partial use of this phase in authority.

The minimum level of financial responsibility set by Congress for the transportation of all other hazardous materials (and for the transportation of the commodities noted above in quantities less than that amount requiring the $5 million coverage) is $1 million. The Secretary also has the authority to set this minimum level as low as $500,000 for a phase in period of up to 2 years if such reductions will not adversely affect public safety.

As described below, the proposed rule would partially utilize this reduction authority. Also, as to hazardous materials transportation, the ANPRM specifically requested comment as to whether, for transportation of any particular hazardous substance not covered by the statute's $5 million requirement, the Secretary should establish financial responsibility requirements in excess of $1 million. No proposals for higher coverage were received.

The ANPRM issued on August 28, 1980, solicited comments and data from the public to determine how readily motor carriers could meet the requirements and to what extent the various levels of financial responsibility could be expected to affect public safety and/or transportation service. The comments received and other information gathered strongly suggest both small motor carriers and small insurance companies would have difficulty obtaining and providing minimum levels of financial responsibility should the Secretary not lower the limits during the optional 2-year phase in period. An example of the many comments indicating the need for lower limits was that submitted by the American Insurance Association (AIA) whose membership, it claims, writes 41 percent of all motor carrier coverage.

In its comments the AIA indicated that time was needed to prepare for the potential surge of new motor carriers requiring new levels of financial responsibility. The AIA further explained that the 2-year phase in period would be utilized to make it possible for the insurance industry to move in the most orderly fashion possible toward meeting the coverage requirements of motor carriers with the smallest possible impact on either the trucking or insurance industries.

Many small motor carriers and representative groups, such as the Minority Trucking Transportation Development Corporation, also submitted comments and data explaining that an immediate requirement of the highest limits would put them under great financial strain and possibly cause them to lose their businesses.

There was general agreement among the larger motor carriers and other groups, such as the American Trucking Associations, Inc., that the highest limits were not unreasonable and could be met without causing any disruption in their services. Many of these carriers indicated that their companies already carry financial responsibility coverage in excess of the highest limits prescribed by the Act.

Likewise, the larger insurance companies indicated in their comments that they anticipate only manageable disruptions in their business as a result of providing motor carriers with the highest limits of financial responsibility prescribed in the Act.

As to the relationship between public safety and higher financial responsibility requirements, a majority of the commenters stated that there is a need to increase the levels presently required by the ICC.[1] The comments generally indicated that the public would be better served by the new limits, especially considering that motor carriers would have greater incentives to create and maintain more effective safety programs to help keep their premiums lower. These comments confirm the expectations of the Congress, which believed the higher limits would act as a mechanism for a new and major focus on safety because carriers with good safety records would be evaluated in a favorable light by insurance companies since generally the premiums that insurance companies actually charge are directly related to their insureds' loss experience.

One group of commenters strongly disagreed with the need for any limits over and above the current ICC limits. The Fertilizer Institute, whose members are responsible for 95 percent of U.S. fertilizer production, submitted a 7-year history of data from accidents involving nurse tanks commonly used by farmers. The statistical data presented indicated a low incident rate as well as a noncatastrophic history.

It is also vitally important in this rulemaking action to consider the economic conditions under which the motor carrier industry operates. Congress expressed a neeed for the Department to pay particular attention to the economic impacts on small and minority motor carriers and independent owner-operators. This rulemaking attempts to recognize the unique problems of small business.

In light of the comments received, information contained in the initial regulatory flexibility analysis, and the intent of Congress to focus on safety without putting undue economic burdens on the motor carrier and insurance industries, it has been determined that

[1] Present ICC limitations are: $100,000 bodily injury (1 person); $300,000 bodily injury (1 accident); $50,000 property damage.

special consideration must be given to small companies that would be affected by these proposed rules. This decision is further supported by the Regulatory Flexibility Act (Pub. L. 96-354) of September 19, 1980, the purpose of which is to provide more flexible regulatory approaches for small business entities.

Therefore, Section 387.9 of these proposed rules would require that large carriers (5 or more power units) maintain the mandated minimum levels of financial responsibility at the earliest time permitted by the statute while the small motor carriers (4 or less power units) be allowed a graduated phase in over a 2-year period. Comments on this proposal are requested.

It is important to note that a truck's ownership does not affect its potential for damage to the public or the environment. With this in mind, all motor carriers subject to the Act will be required to maintain the mandated minimum levels of financial responsibility as of July 1, 1983.

Definitions (§ 387.5)

As used in this part, there are 16 definitions proposed for inclusion in this rulemaking action as § 387.5. A few of them require the presentation of background information in order to understand fully the underlying rationale of the definitions proposed.

Endorsement. An endorsement is an amendment to a policy of insurance and usually takes the form of an attachment to the policy. The proposed rules would require that a motor carrier secure a single endorsement for the liability amounts set forth in these rules in order to satisfy the requirements of these rules.

Public liability and environmental restoration. Throughout section 30 of the Act, reference is made to "public liability, property damage and environmental restoration." It is clear that Congress meant to differentiate between the terms "public liability" and "environmental restoration liability." The term "public liability," by definition (Black's Law Dictionary, 5th edition), includes property damage and personal injury. In this proposed rulemaking the term "public liability" refers to those liability claims arising as a result of the operation of the motor vehicle. The term "environmental restoration" refers to those liability claims resulting from personal injury, economic loss, loss of natural resources, or loss of real or personal property. This would include but would not be limited to (1) the cost of removal from the environment; (2) the cost of necessary measures taken to minimize or mitigate damage or potential for damage to the public health or welfare; (3) the cost of assessing personal injury, loss or destruction; (4) the restitution of loss of income, profit, or impairment of earning capacity from personal injury or damage to property; (5) the cost of out-of-pocket medical expenses or burial costs from injuries; (6) the restitution for loss, damage or destruction of real or personal property or natural resources; or (7) the cost of acquisition of equivalent replacement property or for restoration or rehabilitation of damaged property.

For-hire carriage. As noted in the ANPRM, the statutory financial responsibility requirement applicable to for-hire carriage of nonhazardous materials applies to for-hire carriers whether or not they are regulated by the ICC. The legislative history of Section 30 also makes clear that "private carriage" was not to be subject to the proposed rules.

In response to the ANPRM, the Private Carrier Conference, Inc. (PCC) of the American Trucking Associations, Inc. commented that intercorporate hauling between corporations with 100 pecent common ownership should be considered "private carriage" for the purposes of section 30 of the Motor Carrier Act of 1980. The comments stressed that the receipt of compensation for motor carrier transportation does not make transportation "for-hire" in nature and that, accordingly, compensated intercorporate hauling should be considered exempt from section 30.

After careful consideration of the PCC's comments and the legislative history relevant to sections 9 and 30, the proposed rule would subject intercorporate hauling to these rules. The proposed rule has been developed in recognition of the fact that section 30 of the Motor Carrier Act of 1980 is not an amendment to the Interstate Commerce Act, but an independent provision of law. As such, the legislative history of the section was reviewed to ascertain the meaning of the terms "for-hire" and "private" in the context of section 30, and it should be noted at the outset that the legislative history of section 30 does not mention the word "compensation."

The history of section 30 makes clear that it represented an effort by Congress to *expand* the motor carrier insurance requirements that were in effect at the time the Motor Carrier Act of 1980 was considered by the Congress. In its report on the Motor Carrier Act, the Committee on Public Works and Transportation stated succinctly that "The purpose of this provision is to create *additional* incentives to carriers to maintain and operate their trucks in a safe manner * * *" (H.R. Rept. 96-1069, p. 41) (emphasis supplied). This view was repeated on the House floor by Representative Harsha, then ranking Minority member of the Committee on Public Works and Transportation (126 Cong. Rec. H5350 (daily ed. June 19, 1980)).

It should also be noted that, in the development of the Motor Carrier Act of 1980, the "for-hire" language first appeared in the Senate, by amendment adopted during floor consideration of the bill. Senator Exon, the sponsor of the amendment, characterized it as follows: "Hence, my amendment would *extend* the mandate for minimum liability insurance to all carriers, whether regulated or unregulated." (126 Cong. Rec. S3622 (daily ed. April 15, 1980)) (emphasis supplied).

The PCC would have certain carriers which were subject to insurance requirements as of June 30, 1980, before enactment of section 30, removed from responsibility to meet any Fedeal motor carrier insurance requirements. This position appears to rest heavily on the application of section 9 of the Motor Carrier Act of 1980, a section entitled "private carriage," to section 30. As noted by the PCC, section 9 amended 49 U.S.C. 10524 to "exempt as beyond the Commission's economic jurisdiction compensated intercorporate hauling among * * * corporations standing in a direct or indirect one hundred percent common ownership relationship to one another." However, that the Congress removed certain transactions from the ICC's economic authority (and, by implication, the ICC's liability insurance authority) does not necessarily imply that such transactions were intended to be exempt from the Department's authority as well.

The Department has reviewed the legislative history of section 9, however, in order to ascertain how, if at all, the legislative history for section 9 should be applied to section 30, particularly in light of the congressional statements that section 30 was intended to extend insurance requirements. First, it should be noted that the House Report (p. 21) does refer to the transportation exempted from ICC regulation by section 9 as "for-hire" carriage, "for-hire" being the same term used in section 30. It should also be noted that section 9 did not amend the definition of motor private carrier (49 U.S.C. 10102(13)). While the bill that passed the Senate on April 15 would have amended that definition, that provision was not included in the final bill. Further, a floor colloquy between Senators Cannon and

Packwood during final Senate consideration of the bill (126 Cong. Rec. S7686 (daily ed. June 20, 1980)) makes clear that the purpose of the Senate's proposed amendment to the definition of motor private carrier was to assure the ability of motor carrier members of a corporate family to utilize the exemption to ICC regulation set forth in section 9. Similarly, the Department interprets that Senate Report language for section 9 ("This section . . . would permit compensated intercorporate hauling as lawful private carriage." S. Rept. 96-641, p. 27) as describing the effect of the section as to ICC regulation only. In brief, the Department does not believe that the legislative history of section 9 demonstrates any intent by the Congress to define "private carriage" for the purposes of section 30 as including intercorporate hauling and, in fact, the House Report provides a basis for concluding that transportation exempt from ICC regulation should be categorized as "for-hire." More importantly, however, the history for section 9 seems clearly to be focused on questions of economic regulation, not safety regulation, indicating an even greater need to focus on the legislative history of section 30 itself.

In light of these considerations, the Department proposes a definition of for-hire carriage which interprets the report and floor language regarding section 30 as representing a congressional intent to retain Federal financial responsibility authority over any carrier that was subject to Federal authority for such purpose prior to enactment of the Motor Carrier Act of 1980 and to extend financial responsibility authority to new classes of carriers. The results of this interpretation include the following: carriers which were regulated by the ICC both before and after enactment of the Motor Carrier Act of 1980 are now subject to both DOT and ICC financial responsibility regulation (sections 29 and 30 of the Motor Carrier Act of 1980); for-hire carriers which were not regulated by the ICC both before and after enactment of the Motor Carrier Act of 1980, such as many agricultural exempt haulers, are subject to DOT financial responsibility regulation; for-hire carriers of commodities which the Motor Carrier Act of 1980 newly added to the ICC exempt list (e.g., certain agricultural feed and seed) are no longer subject to ICC insurance regulation for movement of those commodities, but are subject to DOT regulation.

To conclude, as did the PCC, that the Act intended to remove intercorporate hauling from Federal financial responsibility requirements would result in treatment in such contrast to section 30's undisputed impact on other carriers, such as those noted above, that the Department cannot reconcile the PCC's position with the expressed congressional intent to create "additional incentives" for safety. As a result, the proposed rule would subject intercorporate hauling movements to section 30 financial responsibility requirements if those movements were not considered private carriage by the IC under 49 U.S.C. 10524 as that section was in effect up to the time of passage of the Motor Carrier Act of 1980. Operations which were considered as private carriage up to that time will be considered as private carriage for the purposes of this proposed rule. To achieve this result, the proposed rule sets forth as the definition of "for-hire" the exact criteria for the private carriage exemption set forth in 49 U.S.C. 10524(a), the provision describing the private carriage exemption which was in effect on the date of enactment of the Motor Carrier Act of 1980. Thus, the ICC's intercorporate hauling proceedings which were pending but which had not been completed as of the date of passage of the Motor Carrier Act of 1980 are not given any effect. (In a recent order the ICC has noted that the new law "effectively preempts Commission action in the area," Ex-Parte No. MC-122, August 12, 1980). Further, any future action by the Commission in this area is not regarded as binding on the Department's interpretation of section 30.

The foregoing discussion focuses on the scope of section 30, but clearly raises a number of policy questions on which the Department requests comment, data, and analysis, both for the purposes of developing a final rule and of developing the required report to the Congress as to whether further legislation is needed. Private carriers, common carriers, insurance companies and all other interested persons are specificaly asked to comment on the following as well as on any other matters:

(1) Unlike the proposed rule, the ANPRM did not specifically indicate that certain intercorporate hauling would be subject to the requirements of section 30. What is the significance of this proposal on the availability of insurance for intercorporate haulers? For all other persons subject to section 30?

(2) What percentage of traffic exempt from ICC regulation under 49 U.S.C. 10524, as amended, is exempt under subsection (a) as opposed to subsection (b)? Are these percentages expected to change? How much traffic is involved?

(3) If section 30 were amended by the Congress to impose financial responsibility requirements on pivate carriers as well as for-hire carriers, would the insurance be available? For private carriers? For for-hire carriers? How would the cost of insurance be affected?

(4) What would be the effect of an amendment to specifically exclude intercorporate hauling between companies with 100 percent common ownership from the scope of section 30?

(5) By covering for-hire carriage but not private carriage, will section 30 result in a diversion of traffic from for-hire carriers to private carriers? How much of a diversion?

(6) Is there anything inherent in the distinction between private and for-hire carriage that affects safety performance? Should the statute have established some other distinction? No distinction at all?

In bulk. Section 30(b)(2) of the Act mandates a $5 million level of financial responsibility for the transportation of "in bulk Class A explosives, poison gas, liquefied gas, or compressed gas." The Department does not believe there is any definition of the term "in bulk" that applies to all the commodities listed. In fact, the Department is unaware of a clear definition of the term "in bulk" as it applies to the transportation of property of any kind, although it appears that industry has generally considered the transportation of hazardous materials in containment systems with capacities in excess of 110 water gallons as "in bulk" transportation. The ICC has dealt with the problem of bulk commodities for years but only in the context of the service performed by the motor carrier. Generally, the ICC has declared that bulk commodities are for the most part fungible goods that can be poured or will flow easily. In section 30 of the Act, it is clear that Congress was addressing the potential danger to the public represented by the transportation of certain commodities in large amounts. In view of this, the Department looked at the commodities specifically listed (i.e. Class A explosives, poison gas, liquefied gas or compressed gas) in Section 30(b)(2) and developed 3 distinct definitions of the term "in bulk."

In developing these definitions, an important consideration is the Department of Transportation's Hazardous Materials Regulations (49 CFR, Parts 171-189) and the limitations those rules place on the transportation of various commodities insofar as quantity, packaging, and hazard potential are concerned. A review of

these regulations indicates that a rather narrow definition of the term "in bulk" would have to be adopted under this proposed regulation to achieve maximum identity with the hazardous materials regulations. However, as described below, complete utilization of the definitions in the Hazardous Materials Transportation Act would cause the number of motor carriers being subjected to the $5 million level of financial responsibility immediately to be higher than would result if a different definition of the term "in bulk" was adopted. This result would work a particular hardship on smaller motor carriers for the same reasons that immediate imposition of higher financial responsibility requirements might harm these carriers.

For the 2-year interim period, the term "in-bulk" would mean the transportation of property, except Class A explosives and poison gases, in containment systems with capacities in excess of 3,500 water gallons. This definition is compatible with the language used in Section 30(b)(2)(A) of the Act and does not appear to place a hardship on the motor carrier industry. As of July 1, 1983, the definition would automatically change. As of that date, "in bulk" would mean transportation of property, except Class A explosives and poison gases, in containment systems with capacities in excess of 110 water gallons. This definition would be compatible with existing Hazardous Materials Regulations and, and as noted above, it has been generally accepted throughout industry that the transportation of hazardous materials in containment systems with capacities in excess of 110 water gallons is considered to be transportation "in bulk." Additionally, the Hazardous Materials Regulations require much more rigid manufacturing specifications for portable tanks (i.e., capacities in excess of 110 water gallons) than they require for drums, pails and other small containers.

For the 2-year interim period, "in bulk (Class A explosives)" would mean the transportation of any Class A explosive(s) weighing more than 2,000 pounds, in the aggregate, including packaging in vehicles having a GVWR of 10,000 pounds or more. Congress chose to exempt motor vehicles having a gross vehicle weight rating of less than 10,000 pounds from the provisions of Section 30. This exemption would include ½ ton to 1 ton rated vehicles even though they are used to transport Class A explosives. A 1 ton rated vehicle has a nominal carrying capacity of 2,000 pounds. As of July 1, 1983, the definition would automatically change. As of that date the "in bulk" definition for Class A explosives would be the transportation of any Class A explosive(s) in any quantity. Any quantity of Class A explosives presents a serious potential danger to the public. Because of this, the Hazardous Materials Regulations require the public to be alerted (by placarding) any time any quantity is transported. Further, the packaging requirments and other rules concerning the transportation of Class A explosives are very explicit.

The "in bulk (poison gas)" definition will remain constant from July 1, 1981, until amended and would mean the transportation of any poison gas in any quantity on a GVWR of 10,000 pounds or more. The transportation of any quantity of poison gases presents such a serious potential hazard to the public that the Hazardous Materials Regulations impose very stringent requirements on such transportation (i.e., packaging, labeling and placarding). Because of this serious hazard potential, it is believed that motor carriers transporting poison gases must be required to maintain a $5 million financial responsibility level if the public is to be adequately protected.

Motor carrier—large and small. Within the insurance industry there is a specific break-point for premium discounts. Motor carriers operating 5 or more power units are considered "fleets" and are quoted "fleet rates." Motor carriers operating 4 or fewer power units are quoted "non-fleet rates." In the initial regulatory flexibility analysis the BMCS considered the impact of these proposed rules on small businesses. Based upon this analysis, it is proposed to adopt this break-point in setting different levels of financial responsibility for small and large motor carriers.

Financial Responsibility Required (§ 387.7)

Comments regarding that which constitutes a reasonable amount of time for cancellation of policies of insurance, surety bonds, or other agreements and endorsements were varied. The motor carriers generally prefer a longer cancellation period and the inssurance industry generally prefers a shorter period (especially if nonpayment of premiums is involved). However, most commenters agreed that 30 days is a reasonable period. Thirty days is sufficient time for a motor carrier to obtain replacement coverage unless its performance record is extremely poor. It is also sufficient time for an insurance company to be relieved of further liability since normally there is enough premium deposit to cover that period. Also, 30 days is ample time to prepare cancellation papers.

It is important to note that the 30-day notice of cancellation would commence on the day that such notice is received by either party. This is to insure the public full protection by alleviating any possible misunderstanding of the cancellation date. Further, the proposed rule allows the motor carrier the right to obtain adequate coverage for a finite period (e.g., coverage by binder) of time to cover any lapse in continuous compliance without triggering the 30-day cancellation requirement.

The proposed regulations would require that an endorsement be attached to insurance policies for the purpose of assuring the insured that all criteria of Section 30 have been met in the policy. Further, surety bonds, on a prescribed form, using prescribed language, would be permitted in lieu of the policy of insurance and required endorsement. This would alleviate the oftentimes confusing translation and interpretation of an insurance policy or surety bond. It is believed that this requirement would not create an undue paperwork burden on the insurance industry as it consists of a single-page form using simple language. Further, the proposal reflects the Department's belief that the benefits of having an endorsement attached to a policy far outweigh any arguments against it, since it would provide confirmation of full coverage to the motor carrier and the public at a glance. This type of endorsement is already provided to motor carriers who are regulated by the ICC. Based on these findings, the BMCS believes the attachment of an endorsement to an insurance policy has been an effective and efficient method of doing business.

In the case of self-insurance, the BMCS would issue written approval authorizing a motor carrier to be a self-insurer only after it has filed an application with the Bureau. After investigation and approval, the Bureau would issue written approval which would serve the same general purpose as an endorsement.

The proof of financial responsibility, whether it be an endorsement attached to a policy of insurance or a surety bond, or written approval to be self-insured, would have to be kept at a motor carrier's principal place of business. This proof must be available to the public upon reasonable request for review. Such availability would be in line with the intent of Congress to provide protection to the public. It would also provide the assurance needed by a lessor of a motor vehicle that the minimum levels of financial

responsibility have been met by a motor carrier.

Financial Responsibility, Minimum Levels (§ 387.9)

The first three questions of the ANRPM addressed levels of financial responsibility. Comments from large motor carriers indicated that acquiring the coverage to meet the highest limits would present no problems nor would it disrupt their services. Many large carriers indicated that their present coverages meet or exceed the highest limits prescribed in the Act. Likewise, comments received from large insurance companies indicated that providing motor carriers with the highest limits would pose minimal problems to them.

Conversely, both small motor carriers and small insurance companies stated that if the highest limits were adopted at the earliest time permitted by the statute, it would cause a severe disruption in their services. Both groups urged the Secretary to lower the limits for the 2-year phase in period.

It is clear, based on responses to the docket, that it is generally believed that limits required presently by the ICC should be higher to protect the interest of the general public. It is also clear that certain segments of both industries would be hurt financially if the mandated levels of financial responsibility are required immediately. Congress directed the Secretary to consider the impact of the proposed regulations on small business. Further, Congress recently passed the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980; 5 U.S.C. 601 et seq.). The purpose of this Act is to provide a more flexible regulatory approach for small businesses. For these reasons, the rules in this section propose that large motor carriers be required to maintain the mandated minimum levels of financial responsibility as of July 1, 1981, while small motor carriers be allowed a graduated phase in over a 2-year period. Since, by their own admission, most large carriers now maintain financial responsibility coverage equal to or greater than the mandated levels, there should be minimal adverse effect on large motor carriers.

As indicated by the draft regulatory evaluation and the initial regulatory flexibility analysis, medium and small insurance companies may be forced to drop the business of underwriting liability coverage for motor carriers if the higher limits are imposed as of July 1, 1981. The primary reason for withdrawing from this area of underwriting would be the inability to secure sufficient reinsurance treaty protection at the higher levels. Also, certain States have requirements that prevent an insurance company from underwriting coverage in excess of 10 percent of its surplus (policy holder premium retention). These requirements may greatly curtail participation of the medium and small insurance companies in the underwriting of motor carrier insurance.

For the first and second year, the small motor carriers, depending upon the commodity carried, will be required to maintain the minimum levels proposed in the schedule of limits set forth in § 387.9.

As of July 1, 1983, all motor carriers, regardless of size, would be required to meet the minimum levels depending upon commodities carried.

The subject of appropriate levels of financial responsibility for towing operations (wrecker service) was raised by the Interstate Towing Association and others. Towing operations are primarily concerned with the removal of damaged or mechanically disabled vehicles from the highway. Generally, a towing company is expected to respond to any type of disablement situation, irrespective of the cargo the disabled vehicle is transporting. This means a towing company could be called upon to move disabled vehicles laden with either hazardous materials or non-hazardous property. In many instances, especailly where hazardous materials are involved, the motor carrier will unload or transfer the cargo from the disabled vehicle before the tow truck operator moves the disabled vehicle. In those instances, the tow truck operator would be transporting non-hazardous property (i.e., the disabled vehicle) and would be subject to the levels of financial responsibility required for that type of movement. The appropriate level of financial responsibility would depend upon the type of cargo in or on a disabled vehicle at the time a towing operation is performed (fuel in the disabled vehicle's fuel tanks would not be considered a hazardous material or substance for the purposes of this requirement). If towing operations will involve vehicles laden with hazardous materials, substances, or wastes, the appropriate level could be as high as $5 million beginning July 1, 1983.

The size, by number of power units operated, of motor carriers engaged in two truck operations range from 1 to 40 vehicles. The Interstate Towing Association commented that if the towing companies are faced with the necessity of carrying the higher limits of financial responsibility coverage, they would most likely be forced to decline towing vehicles carrying hazardous materials because of the higher cost of insurance and the uncertain frequency of these types of moves. If tow truck operators would choose this course of action, a number of questions immediately arise and comments are sought in answer to those questions:

(1) How many commercial motor vehicles, transporting hazardous materials, are disabled on the highways annually, monthly, weekly or daily?

(2) Do these disabled vehicles on the highways create a situation which would adversely affect public safety? Beyond any danger created by vehicles carrying non-hazardous commodities? If so, how?

(3) Do these disabled vehicles create a situation which would cause a serious disruption in transportation service?

(4) What recourse or remedy would be available to the motor carrier controlling the disabled vehicle?

(5) It is understood that the insurance industry has available a type of coverage known as "trip insurance." Would this type of insurance coverage be available to tow truck operators if they could notify the insurance company in advance that a movement involving hazardous materials was contemplated?

Tow truck operations, by their very nature, must be considered "emergency services." A disabled vehicle sitting in or alongside the roadway could very well be considered more of a danger to the public than the actual towing of a disabled vehicle to a safe haven. These operations are conducted at low speeds and with hazard warning lights activated. The likelihood of an accident occurring while operating in this mode is substantially reduced. Since these "emergency services" are performed at a reduced level of risk by, for the most part, small businesses, it is proposed that tow truck operations be required to maintain reduced minimum levels of financial responsibility for the 2-year phase in period. Those levels would be as follows:

Tow truck operations involving the movement of disabled vehicles laden with property (non-hazardous) * * * $500,000 from July 1, 1981, through June 30, 1983, and $750,000 thereafter until amended.

Tow truck operations involving the movement of disabled vehicles laden with hazardous materials, substances, or wastes set forth in subparagraph (2) of the schedule of limits (§ 387.9) * * * $1 million from July 1, 1981, through June 30, 1983, and $5 million thereafter until amended.

Tow truck operations involving the movement of disabled vehicles laden with hazardous materials, substances, or wastes set forth in subparagraph (3) of the schedule of limits (§ 387.9) * * *

$500,000 from July 1, 1981, through June 30, 1983, and $1 million thereafter until amended.

Qualifications (§ 387.11)

All motor carriers and insurance companies who responded to the ANPRM felt that self-insurance should be available as an option for financial responsibility. This opinion was also shared by six associations representing the trucking industry and two associations representing the insurance industry.

A majority of the respondents agreed that part of the criteria for approval of motor carriers to self-insure should be that the motor carrier submit certified data on the value of company assets. These data should provide proof that the carrier is capable of paying claims at the new required levels without disrupting its normal operations or affecting its solvency. Another suggestion was that the motor carrier provide evidence of its ability to process claims filed against it.

The BMCS agrees that self-insurance should be an option available to motor carriers who can provide satisfactory financial responsibility in that way. However, the BMCS will carefully review any application for the granting of self-insurance authority. A prime factor is that the grantor of self-insurance authority is guaranteeing to the public a motor carrier's solvency for as long as 5 years (in the future). Five years is not an unusual length of time for a serious personal injury claim to proceed through the courts. Such a guarantee is most difficult to give since a self-insured's authority could be revoked whenever financial deterioration occurs.

It is not difficult to uncover many instances where motor carriers had strong financial statements 5, or even 2 years, prior to a bankruptcy.

Another key factor is the availability of insurance and surety programs which permit carriers to handle their own claims. These motor carriers have the presumed benefits of self-insurance (processing their own claims) while the public has the full protection of an insurance or surety company. Examples of such programs include the use of high deductibles and open-ended retrospective rating plans. Surety bond programs always involve a motor carrier handling its own claims.

Criteria which would be used in considering an applicant for self-insurance would include a current in-depth audit to assure the requisite financial strength. The self-insurance applicant would have to exhibit an extremely strong financial statement with a profitable income statement and evidence of substantial financial reserves. A self-insurer would also have to exhibit the ability to process claims, whether it be through its own personnel or outside adjusters.

Motor carriers would not be permitted to deposit collateral, in an escrow account, for the approval to self-insure. This is believed to be impractical since there is no way to determine the proper amount of collateral which would be necessary to assure the final payment of all claims. There is no way to determine how many claims would be incurred and how much a court would finally award for these claims.

State Authority and Designation of Agent (§ 387.15)

Comments to the docket were divided on the issue of having motor carriers obtain insurance only from those companies legally authorized to issue policies in each State in which the carriers operate. Fifty-four percent of the comments from motor carriers and representative associations indicated that insurers should be required to have offices in all States where the companies they underwrite operate. Forty-six percent opposed this because many insurance companies, both foreign and domestic, are not authorized to do business in all States, but do cover claims in those States. It was also pointed out that such a requirement would limit competition among insurance companies, reduce available capacity, and increase premiums.

Comments from insurance companies and their representative associations were similarly divided with 58 percent in favor of the requirement and 42 percent opposed. One company supporting the requirement stated that allowing unlicensed, unregulated companies to provide insurance based only on filings of proof of financial responsibility would lead to major problems. Opposition to the requirement was virtually the same as that offered by motor carriers. Additionally, the point was made that the requirement would discriminate against small insurance companies.

It was found that the policy the ICC has utilized concerning this matter has proven itself to be most effective. The ICC presently requires each acceptable insurance company to execute an agreement which provides that it will designate, upon request, an agent to accept service of process in any State in which it is not licensed. If an insurance company is licensed in a State, it automatically designates the State insurance commissioner, or equivalent, to accept service of process. The ICC has commented that it has had no problem with its rule.

Fiduciaries (§ 387.17)

The terms "insured" and "principal" as used in any prescribed forms would include any fiduciary subsequently appointed. The purpose is to keep the administrative and clerical functions to a minimum. Almost without exception, whenever a fiduciary is appointed to a motor carrier, the same insurance company is involved.

Examples of such fiduciaries are the executor or administrator of an estate for a deceased partner or sole proprietor, or a trustee in bankruptcy. If an insurance company does not desire to continue coverage, it can always cancel its policy. The ICC has had such a provision for many years without a single complaint from any party.

Forms (§ 387.19)

The BMCS has determined that two forms would be necessary to effectively implement the rules pertaining to minimum levels of financial responsibility. Similar forms now exist and are presently required to be filed with the ICC for motor carriers operating under ICC authority. The same forms are required for State filings by interstate motor carriers when such carriers are required to file with a State. The National Association of Regulatory Utility Commissioners (NARUC) has advised that 44 States now require insurance filings for intrastate operations. Forty of the 44 States utilize model forms developed by NARUC.

The BMCS proposes to make modifications, in close cooperation with the ICC, to the present ICC forms. If adopted by the DOT and the ICC, both agencies, the insurance companies, and the various States could make use of the forms with no disruption in their methods of operation. Should the proposed modifications be adopted, no additional paperwork would be required when initiating a new filing of a policy of insurance for a motor carrier operating under ICC authority.

Two forms would be used: (1) and endorsement for a policy of insurance, and (2) a surety bond. Each form would be self-explanatory and would not create any substantial extra paperwork or imposition on operations of either the insurance companies or motor carriers. These forms would provide for easy access by the public which is in keeping with the intent of the Act.

Violation and Penalty (§ 387.21)

To additionally strengthen the incentives for motor carriers to concentrate more rigorously on safety,

Congress included a $10,000 civil penalty to be assessed against any motor carrier proven to be in violation of the final regulations implementing Section 30.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III by establishing a new Part 387 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: January 19, 1981.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

Part 387 is added to read as follows:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Sec.

Authority: Sec. 30, Pub. L. 96-296, 94 Stat. 793; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

§ 387.1 Purpose and scope.

This part prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for every motor vehicle operated on public highways.

§ 387.3 Applicability.

(a) This part applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This part applies to motor carriers operating motor vehicles transporting hazardous materials and/or hazardous substances or hazardous wastes in interstate or intrastate commerce.

(c) *Exception.* The rules in this part do not apply to those motor vehicles that have a gross vehicle weight rating (GVWR) of less than 10,000 pounds.

§ 387.5 Definitions.

As used in this part—*Cancellation of insurance*—the withdrawal of insurance coverage by either the insurer or the insured.

Endorsement—an amendment to an insurance policy.

Evidence of insurance—a surety bond or a policy of insurance with the appropriate endorsement attached or proof of qualification as a self-insurer that will comply with the required minimum levels of financial responsibility set forth in this part.

Environmental restoration—restitution for any personal injury, economic loss, loss of natural resources or loss of real or personal property. This includes but is not limited to—

(1) The cost of removal from the environment;

(2) The cost of necessary measures taken to minimize or mitigate damage or potential for damage to the public health or welfare;

Note.—Public health includes all factors affecting human health and welfare, including, but not limited to, human health, the natural environment, fish, shellfish, wildlife, and private and public property.

(3) The cost of assessing personal injury, loss or destruction;

(4) The restitution of loss of income, profit, or impairment of earning capacity from personal injury or damage to property;

(5) The cost of out-of-pocket medical expenses or burial costs from injuries;

(6) The restitution for loss, damage or destruction of real or personal property or natural resources; or

(7) The cost of acquisition of equivalent replacement property or for restoration or rehabilitation of damaged property.

Financial responsibility—the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this part covering public liability and environmental restoration liability.

For-hire carriage—transportation of property by motor vehicle except when—

(1) The property is transported by a person engaged in a business other than transportation; and

(2) The transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

In bulk (from July 1, 1981, through June 30, 1983)—the transportation, as cargo, of property, except Class A explosives and poison gases, in containment systems with capacities in excess of 3,500 water gallons.

In bulk (from July 1, 1983, until amended)—the transportation, as cargo, of property, except Class A explosives and poison gases, in containment systems with capacities in excess of 110 water gallons.

In bulk (Class A explosives, from July 1, 1981, through June 30, 1983)—the transportation of any Class A explosive(s) weighing more than 2,000 pounds, in the aggregate, including packaging.

In bulk (Class A explosives, from July 1, 1983, until amended)—the transportation of any Class A explosive(s) in any quantity.

In bulk (poison gas, from July 1, 1981, until amended)—the transportation of any poison gas in any quantity.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium—the monetary sum an insured pays an insurer for acceptance of liability for personal injury, property damage, and environmental restoration claims made against the insured.

Motor carrier—large—a person who operates five or more power units.

Motor carrier—small—a person who operates four or fewer power units.

Public liability—claims arising from the conduct, property, and agents of the insured.

§ 387.7 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this part.

(b)(1) Policies of insurance, surety bonds, other agreements and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be affected by the insurer or the insured motor carrier giving 30 days' notice in writing to the other. The 30 days shall commence to run from the date the notice is actually received.

(2) *Exception.* Policies of insurance, surety bonds, and other agreements may be obtained for a finite period of time to cover any lapse in continuous compliance.

(c) Policies of insurance, surety bonds and other agreements required under this section may be replaced by other policies of insurance, surety bonds or other agreements. The liability of the retiring insurer or surety shall be considered as having terminated as of the effective date of the replacement policy of insurance, surety bond or other agreement or at the end of the 30 day cancellation period required in

subsection (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) A single "Endorsement for Motor Carrier Policies of Insurance for Public Liability and Environmental Restoration Liability Under Section 30 of the Motor Carrier Act of 1980" (form MCS–090) (Illustration I) issued by an insurer;

(2) The "Motor Carrier Surety Bond for Public Liability and Environmental Restoration Liability Under Section 30 of the Motor Carrier Act of 1980" (form MCS–082) (Illustration II); or

(3) The written approval, issued by the BMCS, authorizing the motor carrier to be a self-insurer.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and must be produced for review upon reasonable request by a member of the public.

§ 387.9 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.7 of this part are hereby prescribed as follows:

BILLING CODE 4910-22-M

Form MCS-90-2

ILLUSTRATION II

Form Approved
OMB No.

MOTOR CARRIER PUBLIC LIABILITY AND ENVIRONMENTAL RESTORATION LIABILITY SURETY BOND UNDER SECTION 30 OF THE MOTOR CARRIER ACT OF 1980

KNOW ALL MEN BY THESE PRESENTS, That _____,

a corporation created and existing under the laws of the State of _____, with principal office

at _____, (hereinafter called Surety), as Surety

for _____, of _____, _____,
(Name of motor carrier principal) (City) (State)

(hereinafter called the Principal), is held and firmly bound unto the United States of America in the sum or sums hereinafter provided for which payment, well and truly to be made, said Surety hereby binds itself, its successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal is or intends to become a motor carrier subject to the provisions of Section 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety relating to financial responsibility for the protection of the public, and has elected to file with the Bureau a surety bond conditioned as hereinafter set forth; and

WHEREAS, this bond is written to assure compliance by the Principal, as a motor carrier, with Section 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Bureau of Motor Carrier Safety relating to financial responsibility for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for any of the damages herein described.

NOW, THEREFORE, if every final judgment against the Principal for public liability claims or environmental restoration liability claims sustained while this bond is in effect, and resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to Section 30 of the Motor Carrier Act of 1980 (but excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal and property transported by the Principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein.

This bond is effective from _____ (12:01, a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the other. Such termination will become effective thirty (30) days after actual receipt of said notice. The Surety shall not be liable hereunder for the payment of any judgment or judgments against the Principal for public liability claims or environmental restoration claims resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the Surety on each motor vehicle shall be the limits prescribed in 49 CFR 387.9 which were in effect at the time this bond was executed and will be a continuing one notwithstanding any recovery hereunder.

The Surety certifies that the Principal has represented that the transportation operations conducted are adequately described under subparagraph ____ of 49 CFR 387.9 and that this bond is in force in single limit amounts of at least $_____.

IN WITNESS WHEREOF, the said Surety has executed this instrument on the _____ day of _____, 19___.

_____
Surety

(AFFIX CORPORATE SEAL)

_____, _____
City State

By _____

ACKNOWLEDGMENT OF SURETY

STATE OF _____ COUNTY OF _____

On this _____ day of _____, 19_____, before me personally came _____, who, being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for and on behalf of said corporation.

_____
Title of official administering oath

(OFFICIAL SEAL)

Surety Company File No._____.

OMB No.

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY AND ENVIRONMENTAL RESTORATION LIABILITY UNDER SECTION 30 OF THE MOTOR CARRIER ACT OF 1980

The policy to which this endorsement is attached is a public liability and environmental restoration liability policy and is hereby in compliance as the insured, as a motor carrier of property, with Section 30 of the Motor Carrier Act of 1980 and the pertinent rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety.

In consideration of the premium stated in the policy to which this endorsement is attached, the Insurance Company (the Company) hereby agrees to pay, within the limits of liability hereinafter provided, any final judgment recovered against the insured for public liability or loss of or damage to or environmental restoration or property of others (excluding injury to or death of the insured's employees while engaged in the course of their employment, and property transported by the insured, designated as cargo), resulting from negligence in the operation, maintenance, or use of motor vehicles, as described in Title 49, Chapter III of the Code of Federal Regulations, regardless of whether such motor vehicles are specifically described in the policy or not.

Within the limits of liability hereinafter provided, it is further understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is understood and agreed that, upon failure of the Company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment.

The limits of the Company's liability for the amounts provided in this endorsement apply separately to each accident or incident and any payment under the policy because of any one accident or incident shall not operate to reduce the liability of the Company for the payment of final judgments resulting from any other accident or incident.

The Company shall not be liable for amounts in excess of what is stated below for each accident or incident.

SCHEDULE OF LIMITS

Public Liability — Environmental Restoration Liability

Type of Carriage	Commodity Transported	Single Limit Requirement July 1, 1981	July 1, 1982	July 1, 1983
(1) For-hire	Property (Non-hazardous)			
(a) Large Motor Carrier		$ 750,000	$ 750,000	$ 750,000
(b) Small Motor Carrier		500,000	600,000	750,000
(c) Tow Truck Operations		500,000	500,000	750,000
(2) For-hire and Private	Oil or hazardous substances as listed in 40			
(a) Large Motor Carrier	CFR Parts 110, 116 & 261 transported in cargo	$5,000,000	$5,000,000	$5,000,000
(b) Small Motor Carrier	tanks, portable tanks, or hopper-type vehicles	1,000,000	2,500,000	5,000,000
(c) Tow Truck Operations	with capacities in excess of 3,500 water gallons or In bulk Class A explosives, poison gas, liquefied gas, or compressed gas or Large quantities of radioactive materials as defined in 49 CFR 173.389	1,000,000	1,000,000	5,000,000
(3) For-hire and Private	All oil, hazardous materials, hazardous			
(a) Large Motor Carrier	substances, and hazardous wastes not	$1,000,000	$1,000,000	$1,000,000
(b) Small Motor Carrier	mentioned in (2) above	500,000	750,000	1,000,000
(c) Tow Truck Operations		500,000	500,000	1,000,000

Whenever required by the Bureau, the Company agrees to furnish the Bureau a duplicate original of said policy and all endorsements thereon. The Company also agrees, upon telephone request by an authorized representative of the Bureau, to verify that the policy is in force as of a particular date. The telephone number to call is:_____.

The Company certifies that the insured has represented that the transportation operations conducted are adequately described under subparagraph ____ above and that said insured has a policy in force in single limit amounts of at least $_____.

This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days notice in writing to the other. Said thirty (30) days notice to commence to run from the date notice is actually received.

Issued to_____ of _____

Dated at _____ this _____ day of _____, 19 _____

Amending Policy No. _____

Countersigned by _____

Authorized Company Representative.

SCHEDULE OF LIMITS

Public Liability — Environmental Restoration Liability

Type of Carriage	Commodity Transported	Single Limit Requirement		
		July 1, 1981	July 1, 1982	July 1, 1983
(1) For-hire	Property (Non-hazardous)			
(a) Large Motor Carrier		$ 750,000	$ 750,000	$ 750,000
(b) Small Motor Carrier		500,000	600,000	750,000
(c) Tow Truck Operations		500,000	500,000	750,000
(2) For-hire and Private	Oil or hazardous substances as listed in 40			
(a) Large Motor Carrier	CFR Parts 110, 116 & 261 transported in cargo	$5,000,000	$5,000,000	$5,000,000
(b) Small Motor Carrier	tanks, portable tanks, or hopper-type vehicles	1,000,000	2,500,000	5,000,000
(c) Tow Truck Operations	with capacities in excess of 3,500 water gallons	1,000,000	1,000,000	5,000,000
	or			
	In bulk Class A explosives, poison gas, liquefied gas, or compressed gas			
	or			
	Large quantities of radioactive materials as defined in 49 CFR 173.389			
(3) For-hire and Private	All oil, hazardous materials, hazardous			
(a) Large Motor Carrier	substances, and hazardous wastes not	$1,000,000	$1,000,000	$1,000,000
(b) Small Motor Carrier	mentioned in (2) above	500,000	750,000	1,000,000
(c) Tow Truck Operations		500,000	500,000	1,000,000

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§ 387.11 Qualifications.

(a) *As a self-insurer.* The BMCS will give consideration to and will approve the application of a motor carrier to qualify as a self-insurer if the motor carrier furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the BMCS the ability of the motor carrier to satisfy its obligations for public liability or environmental restoration liability set forth in § 387.9 of this part without affecting the stability or permanency of the business of the motor carrier.

(b) *Other securities or agreements.* The BMCS will consider applications for approval of other securities or agreements and will approve any such applications if satisfied that the security or agreement offered will afford the security for the protection of the public contemplated by Section 30 of the Motor Carrier Act of 1980.

§ 387.13 Bonds and policies of insurance.

A policy of insurance or surety bond does not satisfy the requirements of this part unless it is for the full limits of liability required under § 387.9 of this part.

§ 387.15 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this part unless the company furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile; and

(c) Willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§ 387.17 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.19 Forms.

Endorsements for policies of insurance, surety bonds, and applications to qualify as a self-insurer, or for approval of other securities or agreements must be in the form prescribed and approved by the BMCS. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.7 of this part. The endorsement shall be issued in the exact name of the motor carrier.

§ 387.21 Violation and penalty.

Any person who knowingly violates the rules of this part shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Director, Bureau of Motor Carrier Safety, by written notice. In determining the amount of such penalty, the Director shall taken into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[FR Doc. 81-2369 Filed 1-23-81; 8:45 am]
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Federal Register

Monday
January 26, 1981

Part III

Environmental Protection Agency

Asbestos; Reporting and Recordkeeping Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[TSH-FRC 1708; OPTS 84004]

Asbestos; Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This rule, proposed under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), would require reporting to EPA by asbestos manufacturers, importers, and processors.

This proposal would require the reporting of quantities of asbestos used in various processes, employee exposure and monitoring data, and waste disposal and pollution control information. Reported information will be considered by EPA in deciding whether and how to regulate asbestos under TSCA. Any company that mines asbestos, imports or processes asbestos fiber or any asbestos-containing product should consider submitting comments.

DATES: Written comments on this proposal should be submitted on or before March 27, 1981. Following the written comment period, there will be a 20 day period during which EPA personnel will be available to meet in Washington, D.C. with interested persons.

ADDRESS: Written comments should bear the document control number OPTS 84004 and should be submitted to: Ms. Joni Repasch, Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, Room E–447, 401 M Street, SW., Washington, D.C. 20460.

All written comments filed pursuant to this notice will be available for public inspection at the OPTS reading room from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Industry Assistance Office (TS–799), Environmental Protection Agency, Room, E–429, 401 M Street, SW., Washington, DC 20460, Toll free: (800–424–9065), in Washington, D.C.: (554–1404).

SUPPLEMENTARY INFORMATION: Section 8(a) of TSCA authorizes EPA to promulgate rules under which manufacturers and processors of chemical substances must submit such reports as the Agency may reasonably require information must be submitted if known to or reasonably ascertainable by the person reporting. To the extent feasible, the Administrator must not require unnecessary or duplicative reporting.

Under TSCA, manufacturers of asbestos are persons who mine, mill, or import asbestos in bulk form or as part of a product containing asbestos. Processors of asbestos are persons who make products for distribution in commerce which contain asbestos or any asbestos containing component.

EPA emphasizes that the terms "manufacturers" and "processors" as used in TSCA, to some extent, have different meanings from common usage. Section 3 of TSCA defines "manufacturer" to include manufacturers, producers, and importers. Thus, miners and millers of asbestos are "manufacturers" under TSCA, as are importers. Importers include those persons who import asbestos in bulk form, or as part of any product. Thus, persons who import automobiles that contain asbestos brake linings are "manufacturers" of asbestos for purposes of TSCA.

"Processors" of asbestos are persons who prepare asbestos, after manufacture, for distribution in commerce in the same or different form as they received it or as part of a product that contains asbestos. Thus, persons who incorporate asbestos or asbestos-containing components into products are processors under TSCA, even if they consider themselves "users" of a product that contains asbestos.

This proposal divides the asbestos industry into two groups for reporting purposes. EPA will require immediate detailed information on EPA Form 7710–36, "Reporting Commercial and Industrial Uses of Asbestos", from the first group—persons who mine, mill, or import bulk asbestos, or process it to form an asbestos mixture or product, such as asbestos paper. The latter persons are called "primary processors of asbestos".

EPA will require reporting in two phases for the second group—secondary processors of asbestos (secondary processors of asbestos make products from asbestos mixtures as opposed to bulk asbestos), and persons who import asbestos mixtures or other products that contain asbestos. In the first phase, companies would identify themselves and the asbestos mixtures they process or import. EPA would then select a sample of respondents from this identification phase to complete the detailed EPA Form 7710–36 in the second phase of reporting for this group.

The primary reporting form for this rule, EPA Form 7710–36, is a composite form designed for use by several dissimilar types of respondents, each of whom will fill out only designated portions. Thus, as summarized on page 4 of the form (see § 763.76(a) of the proposed rule), the different types of respondents are to complete the following pages:

Type of respondent and page numbers

Miners and Millers—8, 10, 26, 28, 29, 30, 32, 34.

Importers of Bulk Asbestos—8, 11, 26, 28, 29, 30.

Primary Processors—8, 12, 16, 26, 28, 29, 30, 32, 34.

In the second phase of reporting, those secondary processors and importers of asbestos-containing products selected for detailed reporting are to complete the following pages:

Type of respondent and page numbers

Secondary Processors—8, 20, 26, 28, 29, 30, 32, 34.

Importers of Asbestos Mixtures—8, 22, 26, 28, 29, 30.

Importers of Articles Containing Asbestos Mixtures—8, 24, 26, 28, 29, 30.

Information that is submitted for this rule will assist the Agency to address the following questions related to evaluating exposures to asbestos and the potential impacts of various TSCA regulatory options:

1. What are the types, quantities, and values of products made today which contain asbestos?

2. Where are asbestos-containing products made and how much asbestos fiber is emitted from those manufacturing sites and disposed of as waste?

3. What is the number of workers involved with making the different asbestos-containing products and what are the current workplace exposure levels?

4. What are the types and quantities of products now imported which contain asbestos?

I. Background

EPA published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register of October 17, 1979 (44 FR 60061) for an asbestos regulatory investigation. The ANPR comment period was extended to February 17, 1980 in the Federal Register of December 17, 1979 (44 FR 73127). In the ANPR, EPA expressed concern that many sources of human exposure to asbestos may present an unreasonable health risk. Several options for controlling the risks from asbestos were discussed, including a labelling requirement; prohibition of specified products; restriction on the amount of asbestos consumption; or a total ban on the uses of asbestos that would involve granting exemptions in some cases. The ANPR also announced

a joint effort by EPA and the Consumer Product Safety Commission (CPSC) to investigate risks associated with asbestos and to coordinate information gathering among agencies.

Asbestos is consumed by thousands of companies to make a wide variety of products. Some fibers are inevitably released as a result of fiber processing, distribution in commerce, product use, and disposal. Under TSCA, EPA is currently investigating and quantifying the cumulative effects of exposure to asbestos throughout its life cycle in commercial and industrial products.

II. Purposes of This Rule

The purpose of this rule is to obtain current information about major aspects of asbestos manufacture and processing to support the Agency's asbestos regulatory investigation. Information obtained by this rule will be used to improve existing estimates of exposure and of the economics of asbestos use, and to describe asbestos use as thoroughly as practicable. For example, while there are over 3,000 existing patents for applications of asbestos, there is no information on which ones have been used commercially.

This informational rule is being developed in parallel with regulatory analyses under section 6 of TSCA, and analyses by the Consumer Product Safety Commission and the Occupational Safety and Health Administration. By using this rule along with existing information to complete a comprehensive picture of asbestos use in this country, the Agency expects to aid the ongoing Federal efforts to assess and deal with the risks presented by asbestos.

Federal proceedings to control asbestos exposure may be begun without the information this rule would require. This Agency may determine that action under section 6 of TSCA is appropriate before data from this section 8 rule are analyzed. However, consideration of all available information, including information reported under this rule and by way of public comment, would continue until a final section 6 rule is promulgated. The information obtained by this rule will enhance the data base on which decisions are made. In addition, this section 8(a) rule will provide discrete data for use in other Federal regulatory investigations and compliance activities and, potentially, for exemption proceedings that could be necessary following imposition of controls on asbestos exposure.

Information is presently available from a number of sources; however, it is generally already in an aggregated form where the individual discrete components cannot be checked to verify the aggregate. Much of the existing information also consists of estimates which may not reflect the current situation becuase the data were gathered many years ago. In addition, existing data are sparse about certain industrial segments. The Agency intends to use reported data to verify where possible the aggregate data it already has and to complete a fully representative picture of the present situation. In addition, individual reports which identify firms, production sites, and asbestos products will provide a detailed inventory of asbestos use that has not been available for regulatory investigations.

The final section 8 rule may be reduced in scope in comparison with this proposal. As the regulatory analysis under section 6 continues, the Agency may be satisfied that it possesses sufficient information about certain activities; EPA will narrow the final section 8 rule requirements wherever possible in such instances. The requirements could be narrowed in several ways, such as requiring data from fewer years, eliminating categories of information, classifying products more broadly, reporting data company-wide instead of by plant site, or reducing the scope of the secondary processor and importer sample survey.

III. Comments to the Advance Notice of Proposed Rulemaking

Comments to the ANPR have provided helpful feedback on the Agency's approach to regulation, but have contained few of the data needed for the investigation. One exception is the specific data submitted by producers of substitutes for asbestos.

Commentors supported the purpose of a section 8(a) rule so EPA could develop a better profile of asbestos usage in the U.S. Primarily, persons commenting on section 8(a) discussed the following: legal guidelines to which they believe the Agency must adhere when promulgating a section 8(a) rule; the role of section 8(a) data in any TSCA action to regulate chemicals' and the kinds of information they believe EPA may require under the authority of section 8(a). Many persons submitting comments were extremely concerned that reported information be treated confidentially, and that the Agency ensure the protection of confidential information that would be shared with other agencies.

IV. Other Sources of Information

EPA is currently conducting a comprehensive search for all sources of information relevant to the regulatory investigation. This search involves: reviewing the extensive literature concerning asbestos; obtaining information from other Federal agencies; and developing new data through EPA contractors.

The search for information and the preliminary results of the search are described in an internal EPA document entitled, "Technical Information Summary", which is part of the public record of this rulemaking and is available upon request. This document is a descriptive summary of available information and of the uses of the information the Agency may obtain under TSCA section 8(a). The document discusses the steps taken to examine and make maximum use of all available information prior to requiring the submission of new data under this rule.

Briefly, the "Technical Information Summary" contains the following conclusions. First, the basic data source of asbestos consumption patterns is from the Bureau of Mines. Many of the documents concerning industrial and commercial uses of asbestos cite the Bureau of Mines data. However, the data used by the Bureau of Mines to determine asbestos consumption are from an annual voluntary survey of only a portion of asbestos users and, for instance, do not count 40 percent of the bulk asbestos we know is imported. The Bureau of Mines estimates that the asbestos consumption figures are accurate only to ±50 percent. EPA expects to attain a higher degree of accuracy because virtually all of the production of bulk asbestos will be reported under this rule and this production will be reported according to more usefully defined categories of companies and products. In addition, EPA will be able to extrapolate with greater confidence from data obtained in the representative survey to all of industry.

Our search for information from other Federal agencies has obtained useful information from the EPA Office of Enforcement "National Emission Standards for Hazardous Air Pollutant (NESHAP) Asbestos" file, inspection data from both the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA), and import data from the U.S. Customs Service. However, a great deal of desired data is already reported to several agencies who cannot make the data available to EPA because the individual data are confidential. For example, the Bureau of the Census is precluded under Title 13, U.S. Code, from disclosing individual

reports it receives. In addition, the Bureau of Mines promises total confidentiality of reported data in order to encourage voluntary responses to its annual survey.

Contractors working for various OPTS offices have had difficulty in obtaining new data. Often, information is withheld by industry because it is considered proprietary. Many requests to industry for information have gone unanswered or resulted in the submittal of information of little value. Sometimes entry to manufacturing and processing facilities to perform independent monitoring has been either denied or delayed. While the contractor efforts are yielding detailed analyses of available information and useful results for the regulatory investigation, the reports are also identifying several gaps in available information.

V. Uses of Collected Information

The section 8(a) data will be used for analyses related to the TSCA regulatory investigation and economic assessment, non-TSCA regulatory activities by other EPA offices, and investigations or analysis by other Federal agencies. Joint use of information under this section 8(a) rule will avoid duplicate industry reporting and duplicate agency efforts.

A. The TSCA Regulatory Investigation

Data obtained under this rule will support both development of risk assessments and decision-making among potential TSCA control options.

At present, no comprehensive picture exists of the consumption of all of the asbestos produced domestically or imported. Of the presently available information, that of the Bureau of Mines is considered to be the best about the usage of bulk asbestos. However, the Bureau of Mines information does not fully represent asbestos usage. The goal of the present rule is to develop a more comprehensive picture of the asbestos fiber life cycle through mining, milling, product manufacturing, use, and disposal. With this picture, the Agency can qualitatively and quantitatively verify exposure estimates, and at the same time analyze the economic and societal impacts of control options.

To complete the picture, the Agency proposes to obtain data from a variety of respondents. Under this proposal, miners (including millers) and importers will report quantities of bulk asbestos produced or imported by type of fiber; importers of merchandise known to contain asbestos will report the quantities and values of those products. Miners and importers will also report about employee exposures, amounts of waste generated, and the effectiveness of their pollution control equipment. Primary processors and some secondary processors of asbestos will report the amount of asbestos fiber or asbestos mixtures they consume, the quantity of goods they produce, the amount of asbestos they dispose of as waste, the amounts of asbestos collected and emitted (not captured) from their pollution control equipment, and summaries of workplace exposures to asbestos.

The Agency will use the reported data to estimate the total numbers of persons exposed to asbestos by working with asbestos, by using asbestos-containing products, or by living near a mine or processing site. With data obtained by this rule, EPA can develop a more detailed picture of asbestos use to determine and quantify points of environmental release. The reported data about uses and exposures will assist the Agency in describing who is exposed during the life cycle, and whether those persons are miners, transporters, workers, consumers, or the general population. The data will also support the estimation of the levels of exposure, the duration of exposures, and the kinds and sizes of fibers to which persons are exposed. This information will then be considered in the context of the known health effects of asbestos. For example, the amount of asbestos emitted from a factory can be matched to the general population at risk. From reported data, total exposure of construction workers and consumers can be estimated by tying production quantity information to estimated exposure levels that result from the fabrication or use of the products.

The Agency will also use reported data to predict trends about asbestos usage and to determine the efficacy and economic impacts of various regulatory options. To accomplish this, the Agency will consider information about the total amount of asbestos and asbestos mixtures proceeding through the life cycle of asbestos, the numbers of persons employed in making them, and the amounts made for each category of use for a period of years. Reported values of the products made will allow EPA to more accurately project, through econometric modeling, the economic effects of asbestos regulation. Learning the numbers of employees will permit the Agency to evaluate the potential effects on employment of any asbestos regulation.

The Agency will consider whether substitutes are feasible and available for different applications. In assessing the availability of substitutes, reported information on fiber type and size, and the functions of the asbestos in a product will be considered. This information will be used to judge the comparability of performance and cost of asbestos and its potential substitutes.

B. Other EPA Program Offices

Other EPA program offices will also use the data obtained through this rule. The Office of Air Quality Planning and Standards (OAQPS) hopes to learn more about quantities of emissions, efficiency of pollution control equipment, and quantities and methods of waste disposal at industrial facilities. OAQPS is reviewing the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) (40 CFR 61.20) and expects this rule to obtain more current data than are now available. There have been changes in the composition of the asbestos industry, its waste disposal methods, and its use of pollution control equipment since the NESHAP reports were submitted.

The Effluent Guidelines Division, Office of Water Planning and Standards, has been pursuing an investigation of asbestos fiber levels in industrial effluents, and expects to use reported information to identify industries and firms whose effluents could be investigated.

C. Other Agencies

The Consumer Product Safety Commission (CPSC) is especially interested in the inventory of products which will result from reports under section 8(a). The reports will contain descriptions of many companies who make consumer products, the quantities made, the amount of asbestos contained, and any existing data about testing or measurements of fiber release during use of the products. On December 22, 1980, CPSC published a General Order which requires reports about the use of asbestos in certain consumer products (45 FR 84384). This information will be reported before the final section 8(a) rule is published. Consideration of the section 8(a) data may help to focus CPSC's continuing investigation on certain additional consumer products. This information would provide much of the data needed in the CPSC investigation and may relieve CPSC from requiring additional reports from industry. Both agencies intend to share all reported data to the extent possible.

It is likely that some persons will be subject to both the CPSC order and the EPA section 8(a) rule. This proposal stipulates that respondents do not have to report information to EPA that has been previously reported to CPSC, other than their name and product identity, unless the respondent specifically

requested CPSC not to release the data to EPA. In such cases, respondents will be required to complete all portions of the applicable EPA forms. The CPSC General Order requires reporting of three years of data, while EPA's proposal would require five years of data on asbestos mixtures and 10 years of data on bulk asbestos. Companies who must report to both agencies would be required to report data from the additional years to EPA. This requirement is necessary because the two agencies intend to use the data in different ways. CPSC hopes to better estimate how much of the product may still be in commerce or in the consumer's hands. EPA on the other hand, hopes to more completely determine the amounts and forms of asbestos in the environment from past production and better estimate the total impact of asbestos on public health. Historical data will permit time-series regression analysis to better project impacts of a control action on the national economy.

The Occupational Safety and Health Administration (OSHA) has expressed interest in data relating to exposures in the working environment. The Mine Safety and Health Administration (MSHA) is also interested in employment and workplace exposure data. Both OSHSA and MSHA are currently reviewing their asbestos workplace standards and expect the data obtained from this rule to be useful for a number of regulatory efforts.

D. Limitations of This Information

This rule will not obtain some information which may be pertinent to Agency considerations. Many questions about contamination of ambient air may remain becuase there are no Federal requirements that industries measure emissions from mines and milling sites or asbestos product manufacturing sites; or to measure asbestos released during use of products by consumers or workers in the construction industry, including releases during the installation, lifetime wear, or removal of asbestos products. However, respondents would have to submit such data if they possess them.

This rule also will not require the submission of data about the availability of substitutes. At this time, the Agency believes that there is sufficient existing information to make a general finding that substitutes are available for most asbestos applications. However, further detailed information about substitutes for certain products or applications may be needed for the ongoing regulatory investigations. CPSC will require the submittal of information on substitutes for asbestos in certain consumer products under the General Order, described above in section V.C. Should EPA need to require information at a later date, a separate section 8(a) rule would be developed. If further information is needed on the health effects of certain substitutes, unpublished health and safety studies may be obtained under TSCA section 8(d).

Only limited information will be generated about the massive amount of in-place asbestos. Although asbestos has had widespread use for over thirty years, historical data on bulk asbestos will only be reported for ten years and U.S. production of asbestos products for five years. Further, the ultimate fate of only a fraction of the fiber used in the last ten years will be accounted for under this rule.

It must be noted that it is not necessary that the Agency possess every item of information in order to regulate a chemical substance or mixture. It will often be sufficient to extrapolate from known information to obtain the necessary data.

VI. What To Report

EPA has developed two forms which are to be completed by respondents. The composite form, EPA Form 7710-36, "Reporting Commercial and Industrial Use of Asbestos," (hereafter referred to as the "Primary Form"), has individual sections for reporting data about products, production, asbestos consumption, employees, workplace exposures, waste and disposal, pollution control equipment, and estimated quantities of asbestos emissions. Respondents will fill out the sections that apply to them. Each respondent is to complete the relevant sections of the form depending on the activities of the reported plant site. The instructions to the form clearly list the sections that are to be completed by miners and millers, importers of bulk asbestos, and primary processors respectively. Those persons will complete all applicable sections of the Primary Form, and will report all asbestos importation and processing activities in the first reporting phase. In addition, the Primary Form contains separate sections to be completed in a second reporting phase by a sample of persons who are only secondary processors and importers of asbestos-containing products. Persons from those segments who are selected to complete the Priamry Form during the sample survey will complete the applicable sections (see discussion below in "Reporting Procedures").

EPA Form 7710-37, "Secondary Processing and Importation of Asbestos Mixtures," (hereafter referred to as the "Secondary Form"), is a short survey form which requires identification of asbestos mixtures or components, the amounts consumed or imported in 1980, and the products into which these mixtures and components are incorporated. The Secondary Form, to be completed by secondary processors and importers of asbestos-containing products, will serve several purposes for the Agency. The procedural purpose of the Secondary Form is to permit EPA to identify the companies in these groups in the least burdensome manner so that only a representative sample of the groups will be required to complete the Primary Form. The information from the Secondary Form, because it identifies firms and products and production amounts, will in itself provide EPA with valuable information. Data from the Secondary Forms will show the breadth of the secondary processor population and the variety of asbestos-containing products that are presently manufactured or imported. Finally, the reports of the quantities of asbestos mixtures that were consumed or imported in 1980 will permit EPA to gauge the present levels of processing and importation of asbestos products. These data will be used in estimating potential worker and consumer exposure and in judging the economic consequences of alternative control options. In addition, knowing the products of secondary processing will support determinations of the availability of substitutes.

VII. Who Reports

This proposal defines who must report and what to report according to the industrial activity of the respondent during 1980. The Primary Form must be completed by all persons who mine, mill, import, or process bulk asbestos. The Secondary Form will be completed by secondary processors or persons who import asbestos mixtures or articles containing asbestos components. Some of these persons will be selected subsequently to also complete the Primary Form. This section will clarify the meaning of some of these terms that are specific to this rule.

Under this rule, a manufacturer is a person who mines or mills (produces) bulk asbestos or a person who imports asbestos either as bulk asbestos or as part of a product. Persons who, in addition to manufacturing, also process their products will report as both manufacturers and primary processors, as described below. This rule does not require reports by manufacturers or

processors of products which contain asbestos as a contaminant or an impurity. While the Agency is concerned about the health risk posed by fibrous minerals in may ores or other products, this subject is not within the scope of the present EPA investigation.

TSCA defines a processor in part as a person who prepares a chemical substance or mixture, after its manufacture, for distribution in commerce. This rule classifies processors into two groups according to their starting material. "Primary" processors of asbestos are those whose starting material is bulk asbestos (a chemical substance). "Secondary" processors of asbestos are those whose starting materials are asbestos mixtures.

A primary processor starts with bulk asbestos and makes a mixture that contains asbestos fiber. (A primary processor may simply mix or repackage different types or sizes of fiber and then sell that product. Such a mix of fibers is still considered "bulk asbestos" for the purpose of this rule.) Asbestos mixtures are products to which asbestos fiber has been intentionally added and which can be used or processed further and incorporated into other products. For example, asbestos cement, asbestos paper, and asbestos-reinforced plastics are asbestos mixtures. In some cases, a primary processor further processes the asbestos mixtures. If so, the person is also a secondary processor. For instance, asbestos paper can be further processed to incorporate it into an article or asbestos-reinforced plastics can be further processed to make vinyl-asbestos floor tile. Under this regulation, persons who are involved in both primary and secondary processing activities at the reported plant site must report both types of activities on the Primary Form. Only persons who are solely secondary processors at the reported plant site report as secondary processors.

"Secondary processors" are those who start with asbestos mixtures and incorporate them into their own products. For example, persons who fabricate asbestos cement sheet by cutting the sheet to make an electrical switch board, or persons who make garments by cutting an asbestos textile, are secondary processors. An automobile manufacturer is a secondary processor if he incorporates asbestos felt into an automobile as a hood insulation blanket or makes heating vent ducts from asbestos paper. A paint formulator is a secondary processor if he purchases a paint that contains asbestos and reformulates the paint by adding some agent to give the paint special properties for specific applications. A more complete list of examples of asbestos starting materials and products may be found in the instructions to EPA Form 7710-36 and 7710-37.

Certain secondary processors are excluded from this rule. They are persons who repair articles, repackage asbestos mixtures without modification, or who engage in construction work. Other secondary processors are exempted if they apply, assemble, install, erect, or consume asbestos products without modifying or fabricating the asbestos products. While we believe there may be a substantial risk from asbestos exposures in these categories, we expect to complete necessary analyses with estimates and extrapolations of data reported by the persons who make the asbestos-containing products that are processed by the excluded industries. Therefore, reports from these excluded industries are not essential. The Agency proposes to exempt these persons from reporting primarily because so many persons are in these categories, the workforce is constantly changing, and they are generally composed of many small businesses, such as brake repair shops and construction companies.

Persons who solely distribute in commerce, and do not manufacture, import, or process asbestos products, are excluded from reporting under this rule.

Reporting is not required by persons who use bulk asbestos or asbestos products but do not distribute them in commerce as part of a product. The most common example of this is in the manufacture of chlorine, where some persons use asbestos as a diaphragm to separate the chlorine and the caustic soda. While much bulk asbestos is consumed annually by this industry and much waste generated, asbestos fiber is not present in the resultant products which are distributed in commerce and these activities are therefore not "processing" within the meaning of TSCA.

This rule requires reporting by manufacturers and processors of asbestos mixtures. Section 8(a) states that reporting by manufacturers or processors of mixtures should be required only when the Administrator determines that it is "necessary for the effective enforcement" of TSCA. Those who manufacture or process asbestos mixtures are also necessarily processors of asbestos, the chemical substance. The processing of the chemical substance asbestos is an activity that is likely to involve potential risk to health and the environment. This information gathering rule is supporting the Agency's investigation of the magnitude of exposures to a chemical substance. Therefore, manufacturers or processors of mixtures containing that substance will be considered processors of the chemical substance for purposes of this section 8(a) rule. Section 8(a) does not require that EPA determine whether information from such persons will be "necessary for the effective enforcement" of TSCA. In this case, EPA has nevertheless made the determination. In this rule, we propose that information about mixtures be reported or kept as a means of tracing asbestos through the lifecycle. For this purpose, the information is essential to completing the picture of the source, utilization, and ultimate fate of asbestos. Therefore, to the extent that this rule would require information about asbestos to be reported or kept by persons who manufacture or process asbestos mixtures, the Administrator finds that it is necessary for the effectiveness of this rule and, therefore, for effective enforcement of TSCA.

Those who import an asbestos mixture or an article containing an asbestos component(s) are required to identify themselves and the asbestos component(s) of the imported product. By this requirement, EPA is attempting to determine all of the asbestos-containing products being distributed to consumers and to industry. This will enable the Agency to estimate the total health risk posed by asbestos, including the risk from imported products. Clearly, asbestos may present risks of exposure when it is contained in imported products—whether fiber release occurs during processing, use, or disposal. The Agency recognizes that there is a large universe of asbestos-containing products that are imported, and that some importers may not know that discrete components of imported merchandise contain asbestos. In those cases, EPA will not learn of all imports that contain asbestos. However, we expect that many importers do know that their imports contain asbestos components, because either "asbestos" is part of the product name or the product specifications identify asbestos. Importers should note that under this rule, they are not required to conduct extensive research or to contact the foreign manufacturer to learn this information. Thus, under § 763.77 of the rule, importers who submit the Secondary Form are required to report to the extent that this information is in their possession.

VIII. Reporting Procedures

Companies with multiple plant sites must report the activities of each plant site on an individual form with one exception. That exception is that respondents have the option to report the total imports or exports of the company altogether on a single form. The form instructions explain further how this is to be done.

Miners, millers, primary processors, and importers of bulk asbestos would submit all appropriate portions of the Primary Form within 60 days after the effective date of the final rule. If the respondent's activities include "secondary processing" or importing of asbestos mixtures or articles containing asbestos components, all such activities would be reported at the same time the person reports as a miner, primary processor, or importer of bulk asbestos. All such persons will be subject upon request by EPA to further reporting of customer lists and quantities sent to those customers, and, except for importers, specified monitoring data up to four years after the effective date of the rule.

EPA will require reporting in a different way for secondary processors and importers of asbestos mixtures. Apparently there are many thousands of persons who are secondary processors or importers of asbestos-containing mixtures. EPA has devised a scheme to reduce the reporting burden for these companies. Persons who are solely secondary processors or importers of asbestos mixtures or articles containing asbestos components would be required to report to EPA in phases. First, they would submit the Secondary Form within thirty days after the effective date of the rule. The Secondary Form reports will be used by EPA to improve the Agency's knowledge of the products being made with asbestos, the number of companies making the products that contain asbestos and the amounts of asbestos mixtures they use, and the kinds and amounts of mixtures and products being imported.

The Agency anticipates that further reporting of the information on the Primary Form by some respondents will be necessary to develop more complete profiles and projections for regulatory analyses. The Secondary Form will not ask all respondents (estimated to comprise 9,000 plant sites) for the detailed information the EPA would like to consider in the risk and economic analyses. Instead, the Agency plans to have a representative sample of Secondary Form respondents report more detailed information. The Agency wants to account for 100 percent of asbestos usage, but for purposes of this analysis, and to reduce the reporting burden, we will be satisfied to make extrapolations from less than 100 percent. EPA believes that a sampling technique can provide information that would adequately describe secondary asbestos processing and products. Sampling to decrease the number of processors required to submit additional detailed information will reduce the overall burden of additional reporting substantially. In section XII, "Reporting Burden", we estimate that Phase 2 reporting will be required from approximately 20 percent of the Phase 1 respondents. Our objective is to sample only the number necessary to meet the goal of attaining a reliable sample.

EPA plans to use a stratified random sampling method as the basis for the sample survey.[1] That is, the respondents to the Secondary Form would be divided into non-overlapping and reasonably homogeneous strata and then sampled by stratum. The strata would be defined by all or an appropriate subset of the following variables: reported asbestos starting material, reported asbestos end product, and the volume of asbestos starting material annually consumed. The type of asbestos starting material and the asbestos end product would permit EPA to follow a representative portion of each product category application in the asbestos lifecycle. Consideration of the amount of the asbestos starting material that is consumed will better ensure representation of both larger and smaller processors of asbestos materials.

The Agency can only make the final decision on which variable(s) to use in stratifying and how large the sample will be after examining the composition of the Secondary Form respondents, since the actual numbers of respondents and the products they report in the first phase may vary significantly from present estimates. The Agency will stratify and sample respondents with the goal of minimizing the reporting burden as much as is practical. To extrapolate an estimate about a population from a sample survey requires obtaining reports from enough respondents to represent the whole population. To make an estimate about a stratum composed of a few respondents may require sampling a larger percentage than would be necessary to make an estimate of the same reliability about a stratum composed of a greater number of respondents. EPA will use one or a combination of the variables listed in the preceding paragraph to stratify respondents for the sample survey. The Agency will select the stratifying variable(s) which will result in the fewest number of respondents while still ensuring a reliable statistical sample.

The Secondary Form respondents selected for more detailed reporting will be notified by certified letter. These persons will have 60 days to complete relevant portions of the Primary Form.

All persons selected for detailed reporting on the Primary Form would also be subject to further reporting of customer lists and quantities sent to those customers, or, except for importers, monitoring data for four years after the effective date of the rule.

Some persons subject to reporting under this rule may be exempted from reporting certain information already reported to EPA, CPSC, or OSHA. A company which has adequately reported data to EPA will not be required to report the same information again, and would write "EPA" in place of the data on the form. Persons who have already reported production or importation quantities to CPSC must still identify themselves and the names of their products to EPA according to the requirements of this rule. However data already reported may be referenced by writing "CPSC" in place of the data, unless the respondent specifically requested CPSC not to release the data to EPA.

The Agency intends to send reporting forms directly to as many potential respondents as possible. To identify persons currently subject to this rule, a master list of persons known to produce or make asbestos products has been assembled from a number of different lists supplied by industry associations, government agencies, and industry information that is publicly available. In addition, efforts will be made to widely publicize these reporting requirements, so that persons as yet unknown to EPA will comply with these reporting requirements.

The Agency solicits comments on these procedures and requirements.

IX. Records To Keep

In this proposal, persons subject to reporting the Primary Form would also be required to keep, until four years after promulgation of this rule, certain supplemental information available for submission to EPA upon request. Persons who report only the Secondary Form would not be subject to these recordkeeping requirements. In addition, the monitoring records of importers need not be keep for or made available to EPA.

[1] Kish, Leslie. *Survey Sampling.* New York: John Wiley. 1965.

All persons required to submit the Primary Form would keep a list of customers for their products in 1980, and could be required to provide to EPA the names of the customers, their addresses and the quantity of each asbestos-containing product sent to each customer. It may be necessary for EPA to examine these customer lists. Some customers may not be subject to reporting (because they are either not processors under TSCA or exempt in this rule from reporting), yet the Agency may need to know about the consumption of asbestos by those customers for assessment purposes. If the Agency finds it likely that many persons did not initially report as required, EPA may need to trace asbestos usage by obtaining lists of customers and sending those persons reporting forms to complete. Also, the Agency may need to examine the lists of customers, in order to ensure that reports are obtained from all persons subject to this rule.

The second recordkeeping requirement makes available to EPA the OSHA and MSHA monitoring data of miners, millers, primary processors, and the secondary processors completing the Primary Form. These data are now required to be kept, but are available upon request only to the Department of Labor and the Department of Health and Human Services. Should EPA need to examine the data upon which the submitted monitoring summaries are based, this requirement will permit EPA direct access to those records.

If the Agency needs to examine records for the reasons stated above, a certified letter, signed by the Deputy Assistant Administrator, Office of Toxic Substances, would inform these persons. Respondents would have 30 days to report customer lists, and 60 days to report monitoring data.

X. Confidentiality

The Agency has developed specific instructions for asserting and substantiating claims of confidentiality for any information submitted in response to this rule. These instructions are incorporated in the reporting forms and may be found in §§ 763.76 and 763.77 of the rule. Any claims of confidentiality must be made at the time of submission as provided in 40 CFR Part 2 as amended September 8, 1978 (43 FR 39997), and March 23, 1979 (44 FR 17673), and in the manner specified in the reporting forms of this proposed rule. To ensure proper handling, confidential material must be submitted to: Document Control Officer, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, Rm. E-447, 401 M Street, SW, Washington, D.C. 20460.

This proposal employs a simple certification method to assert a claim of confidentiality. To assert a claim of confidentiality, the respondent would mark the applicable line on the form that contains confidential information. The respondent would certify that the company has taken measures to protect the confidentiality of the information, that the information is not publicly available, and that disclosure of the information would cause the company substantial competitive harm. All of these conditions must exist for any information to be claimed confidential. Final determinations on confidentiality will be made by EPA in accordance with 40 CFR Part 2.

The Agency proposes to aggregate information about production, consumption, employment, and environmental release that is reported for this rule. The Agency will primarily use aggregate data for analysis necessary to support the TSCA section 6 regulatory investigation. These data aggregates and analyses will be part of the section 6 asbestos rulemaking record that is available to the public. To protect confidential information in the aggregrate data sets, in most cases no data from individual reports would be released, even if they are non-confidential. Releasing discrete data could jeopardize the aggregate data sets, because through subtraction of non-confidential data from the aggregate it would be possible to ascertain specific confidential data. Comment is invited on this aggregration procedure.

The Agency believes that, in the case of asbestos, basic identifying information (company name, plant site location, and asbestos product name) should not be considered confidential and should be available to the public upon request. The Agency has observed that companies usually make no secret of the presence of asbestos in their products and that it is generally an advertised component of the product. In any case, it is likely that a competitor could easily ascertain that asbestos is present in the product. EPA believes that companies should not anticipate making such claims. Comment is invited on the question of whether there are circumstances in which any of the above three items of information could be confidential.

As previously stated, EPA intends to share all reported data with other Federal Agencies, including confidential data in individual reports. However, EPA will require that personnel from other agencies obtain a TSCA security clearance before access to confidential data is granted (See "TSCA Confidential Business Information Security Manual," Chapter 6—Security Requirements for Other Federal Agencies). Similarly, EPA will require that an agency adopt certain security procedures before confidential information can be stored at that agency.

XI. Small Manufacturers and Processors

In this proposal, small businesses which employ ten or fewer employees are exempted from any requirements of this rule. We estimate that over 40 percent of the potential respondents who are not otherwise excluded will be exempted as a result of this provision, while firms that account for approximately 97 percent of employees and sales will still be included. The basis for these estimates is summarized in a memorandum titled "Statistics for Companies with 10 or Fewer Employees", which is part of the public record for this rule. The Agency believes that this exemption, in conjunction with other exclusions in this rule will greatly reduce the reporting burden of this rule, yet enable EPA to obtain sufficient information to meet the needs of the TSCA asbestos regulatory investigation. (EPA has also excluded many small businesses by exempting the construction and repair industries.) This definition of small businesses is the same definition used by OSHA to exempt employers from recording and reporting work-related injuries and illnesses (29 CFR Part 104), and this has become a standard familiar to industry.

The Administrator may not be obligated to exempt small businesses from this asbestos reporting rule. Section 8(a)(3) requires that small businesses be exempt from section 8(a) rules unless the chemical substance or mixture is subject to a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6. On September 17, 1980, EPA proposed a rule on asbestos under section 6 of TSCA (45 FR 61966). However, we know that many small businesses would potentially be subject to this section 8(a) rule. Even though it is not obligated to exclude them, the Agency is proposing to exclude small businesses if the objectives of the rule can still be met.

The Agency proposes to exempt small businesses from reporting because we expect to obtain a sufficient amount of information even with a small business exemption. Our analysis indicates that relatively few primary processors (a concentrated industry composed of large companies) would be exempted under the proposed exemption, so that the Agency will still be able to develop a good profile of the primary processing

industry. Also, the Agency will develop a reasonably comprehensive inventory of asbestos-containing products and determine the potential for exposure at their manufacturing sites, since the remaining nonexempt persons account for approximately 97 percent of the employees and product sales in affected industries.

XII. Reporting Burden

In order to assess the clarity of the form and to ensure that data are reported in the most effective manner, the Agency conducted a pre-test of the form through the Institute for Survey Research, Temple University. The respondents were members of the Asbestos Information Association. This pre-test was quite valuable to EPA in improving the clarity and coherence of the form. In addition, the respondents estimated the cost of completing each section of the form. The final report by the Institute for Survey Research, "Design and Testing of Asbestos Use Reporting Form", is part of the public record for this rule. The pre-test was not a statistically-based sample and only eight companies were asked to participate. Therefore, the resultant cost estimates could not be used directly to compute the reporting impacts of this rule. However, the pre-test results helped EPA arrive at an impact estimate. A detailed description of the reporting burden estimates can be found in a report by Arthur Young & Company, "Economic Impact Analysis for the TSCA Section 8(a) Rule, Reporting Commercial and Industrial Uses of Asbestos", which is part of the public record for this rule. The results of the pre-test and the reporting burden calculations are summarized in the "Reports Impact Analysis", an internal EPA report that is available in the OPTS Reading Room. The documents cited above may be acquired by writing or calling the Industry Assistance Office at the address and telephone number given at the beginning of this notice.

In section XI of this preamble—"Small Manufacturers and Processors"—we calculate that 40 percent of the secondary processors will be small businesses and will be exempt from this rule. Therefore, in this section costs are calculated for 5385 secondary processors, while we estimate there may be a total of 8,974 secondary processors if small businesses are counted. (These estimates are derived from a formula used in 1976 by the Asbestos Information Association, which is described in the "Reports Impact Analysis".) In addition, our calculations exclude primary processors who are known to be small businesses. However, we do not calculate the cost reduction from excluding small importers because the composition of that segment is not well-defined. Yet, we do expect that this group will contain some small businesses. Therefore the actual reporting costs may be less than our present calculations.

As already discussed, two reporting forms will be used for this rule. The Primary Form will be completed by miners, millers, primary processors of asbestos, and importers of bulk asbestos in a first reporting phase. We estimate that for this group of respondents, a total of 487 reports would be received by the Agency. Completion of these reports would require a total of 11,000 hours, and cost approximately $320,000.

Secondary processors and importers of asbestos mixtures or articles containing asbestos components will be required to initially complete the Secondary Form. We estimate that it will take four hours to complete each form, at a cost of $120 per form. The Agency anticipates receiving 5750 such reports. Therefore, the Secondary Form reporting would require a total of 23,000 hours, and would cost approximately $690,000.

We expect that approximately 20 percent of those persons who initially complete the Secondary Form will be selected, in a sample survey, to complete the Primary Form. From this survey, EPA expects to receive 1150 reports, which would require a total of 37,000 hours, and would cost $1,100,000.

Based on these cost estimates, and assuming a small business exclusion, we estimate the total cost of reporting for this rule would be $2,100,000, requiring 71,000 reporting hours. If a small business exclusion were not included, we estimate this rule would require a total of 110,000 hours, with a total cost of $3,200,000.

Using available data, an economic impact analysis of the proposed rule was performed for primary processors. Using the measure of the one-time cost as a percent of annual gross profits, the estimated impact was found to be minimal (around 0.1%) for even the smallest primary processors (the ones most likely to be impacted).

Such an economic impact analysis was not possible for the other industry segments affected by this rule due to unavailability of data. EPA did compare the average value of shipments for four-digit SIC codes for primary processors and other SIC codes likely to contain asbestos secondary processors. This comparison suggested on significant difference between primary processors and other industry segments in the size ranges of 10–19 and 20–49 employees. These size categories are the smallest establishments likely to be impacted by this proposed rule and the ones most likely to experience adverse effects. On this basis, EPA feels that the potential impacts on secondary processors and others in the asbestos industry will be of a similar small magnitude as the impacts estimated for the primary processors. Refer to two documents in the public record: (1) "TSCA Section 8(a) Rule Reporting Commercial and Industrial Uses of Asbestos: Economic Impact on Secondary Processors", memorandum from Regulatory Impacts Branch, December, 1980, and (2) "Economic Impact Analysis for the TSCA Section 8(a) Rule Reporting Commercial and Industrial Uses of Asbestos," Arthur Young & Company, Washington, DC, October, 1980.

Comment is requested on these cost and economic impact estimates. Further, EPA recognizes that these cost projections are estimates based on only a few participants in the ISR pretest. The Agency requests any relevant data and estimates of the costs to complete the form as well as any other specific data on company size, number and types of employees, number and types of asbestos products, gross margins, and other company data relevant to developing the reporting impact analysis for the final rule. The Agency will consider any data submitted in determining the economic impact of the final rule.

This rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, it is not subject to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354. As required by the statute, EPA is consulting the Office of Advocacy, Small Business Administration. As described above in section XI, the Agency is proposing to exempt small businesses from the requirements of this rule. The proposed definition of small businesses would exempt approximately 40 percent of the entities which would otherwise be subject to the rule. The Agency is requesting public comment on whether this exemption is appropriate for this information gathering activity. Should the Agency adopt this small business exemption of an alternative exemption after consideration of comments, then this rule will have no impact on small entities. Moreover, the Agency believes that the cost of reporting under this rule is not likely to have a substantial impact on any entity potentially subject to the rule.

XIII. Enforcement of This Rule

The Agency intends to vigorously enforce the reporting requirements of this rule. TSCA section 15(3) makes it unlawful for any person to "fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this Act or a rule thereunder." Section 16 states that violating section 15 makes a person liable to the United States for a civil penalty and possible criminal prosecution. Under TSCA section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

EPA is identifying as many persons as possible who are subject to this rule; responses from those persons will be carefully monitored for compliance. In addition, should the Agency believe that many secondary processors have not identified themselves, EPA may require the submission of customer lists from identified processors. Persons thus identified who have not reported to EPA will be required to report and may also be subject to sanction.

XIV. Sunset Provision

The general requirements of this rule will expire five years after the effective date of the rule. Certain other requirements will expire prior to the end of the five-year period. The selection and notification of sample survey participants for Phase 2 reporting (see section VIII of this preamble and § 763.71(c) of the rule) will take place within three years after the effective date of the rule. Additionally, the customer list and monitoring data retention requirements (see section IX of this preamble and § 763.70(c)(3)) will expire four years after the effective date of the rule. If EPA determines that any requirements of this rule should be continued, a notice to that effect will be published for comment.

XV. Public Meetings

There will be a 20-day period following the written comment period during which EPA personnel responsible for developing this proposal will be available to meet in Washington, D.C., with interested persons from companies, organized labor, trade associations, and citizen organizations to discuss this proposal. EPA will provide facilities and make other necessary arrangements for such meetings. The Agency will make transcripts or summaries of the meetings for inclusion in the official public record.

All meetings will be open to the public. EPA generally intends to limit active participation in the Washington meetings to those requesting the session and EPA personnel designated for the session.

Interested persons should call EPA's Industry Assistance Office, toll-free, at 800 424-9065, or 554-1404 in the Washington, D.C. area to request time for such a meeting.

XVI. Public Record

EPA has established a public record for this rulemaking as defined in section 19(a)(3) of TSCA (docket number OPTS-84004). The public record, along with a complete index, is available for inspection in the OPTS reading room from 8:00 a.m. to 4:00 p.m. on working days (401 M Street, SW, Washington, DC 20460). This record contains the basic information that the Agency considered in developing this rule. The Agency will supplement the record with additional information as it is received. This record includes the following:

1. This proposed rule.
2. "Commercial and Industrial Use of Asbestos Fibers; Advance Notice of Proposed Rulemaking," published on October 17, 1979 (44 FR 60061).
3. "Commercial and Industrial Use of Asbestos Fibers. Extension of Comment Period and Announcement of Additional Control Option," published on December 17, 1979 (45 FR 18374).
4. Comments received in response to the Advance Notice of Proposed Rulemaking.
5. Reports Impact Analysis of this proposed rulemaking.
6. "Statistics for Companies with 10 or Fewer Employees", memorandum, from Chemical Information Reporting Branch, October 30, 1980.
7. "Design and Testing of Asbestos Use Reporting Form", Institute for Survey Research, Temple University, Philadelphia, PA, June 30, 1980.
8. "Economic Impact Analysis for the TSCA Section 8(a) Rule, Reporting Commercial and Industrial Uses of Asbestos", Arthur Young & Company, Washington, D.C., October, 1980.
9. The Technical Information Summary for this proposed rulemaking.

EPA anticipates adding the following types of information to the rulemaking record.

1. All comments on this proposed rule.
2. All relevant support documents and studies.
3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)
4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

It is proposed that proposed new 40 CFR Part 763 be further amended by proposing to add a new Subpart D to read as follows:

PART 763—ASBESTOS

* * * * *

Subpart D—Records and Reports Reporting Commercial and Industrial Uses of Asbestos

Sec.

Authority: Sec. 8(a) Toxic Substances Control Act (TSCA), Pub. L. 94-469, 90 Stat. 2029, (15 U.S.C. 2607(c)).

Subpart D—Records and Reports

§ 763.60 Scope and compliance.

(a) This rule requires recordkeeping and reporting by persons who manufacture, import, or process asbestos. Different reporting requirements are imposed depending on the person's activity. Manufacturers, importers and processors of commercial and industrial asbestos fiber must report quantity, use, and exposure information. Importers of mixtures and articles containing asbestos and processors of asbestos mixtures will report to EPA in two phases. They initially must report limited information about processing or importation. Some must subsequently report additional information if they are selected as respondents in a sample survey. Certain persons subject to the rule must keep records of certain information that EPA may require at a later date.

(b) Subsection 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under

this rule. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 763.63 Definitions.

The definitions in section 3 of TSCA and the following definitions apply for this rule:

(a) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

(b) "Asbestos mixture" means a mixture or other material to which bulk asbestos or another asbestos mixture has been added as an intentional component. An asbestos mixture may be either amorphous or a sheet, cloth fabric, or other structure.

(c) The term "bulk asbestos" means any quantity of asbestos fiber of any type or grade, or combination of types or grades, that is mined or milled with the purpose of obtaining asbestos. This term does not include asbestos that is produced or processed as a contaminant or an impurity.

(d) "EPA" means the United States Environmental Protection Agency.

(e) "Importer" means anyone who imports any chemical substance, in pure form or as part of a mixture or article, into the customs territory of the U.S. and includes:

(1) The person liable for the payment of any duties on the merchandise, or

(2) An authorized agent on his behalf (as defined in 19 CFR 1.11). Importer also includes, as appropriate:

(i) The consignee;

(ii) The importer of record;

(iii) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20; or

(iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the U.S. consists of the 50 states, Puerto Rico, and the District of Columbia.

(f) "Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person might be expected to possess, control, or know, or could obtain without unreasonable burden or cost.

(g) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage and includes among other things, such manufacture of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, and

(2) For use by the manufacturer, including use for product research and development, or as an intermediate. "Manufacture for commercial purposes" also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts and coproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Byproducts and impurities may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(h) "Miner of asbestos" is a person who produces asbestos by mining or extracting asbestos-containing ore so that it may be further milled to produce bulk asbestos for distribution in commerce, and includes persons who conduct milling operations to produce bulk asbestos by processing asbestos-containing ore. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore. To mine or mill is to "manufacture" under section 3(7) of TSCA.

(i) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal Government.

(j) "Primary processor of asbestos" is a person who processes bulk asbestos.

(k) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(l) "Secondary processor of asbestos" is a person who processes an asbestos mixture.

(m) "Small manufacturer, processor, or importer" means a manufacturer or processor who employed no more than 10 full-time employees at any one time in 1980.

§ 763.65 Who must report.

(a) Persons who were miners or primary processors of asbestos, or importers of bulk asbestos in 1980 must submit a separate EPA Form 7710-36, Reporting Commercial and Industrial Use of Asbestos, in § 763.76, for each plant site and for each company activity not elsewhere reported, according to the schedule in § 763.71. When two or more persons meet the definition of "importer" for the same shipment, the principal in the transaction, not his agent or agents, shall report.

(b) Persons who were secondary processors of asbestos in 1980 must complete and submit Parts I and II of EPA Form 7710-37, Reporting Secondary Processing and Importation of Asbestos Mixtures, in § 763.71, for each plant site or activity, according to the schedule in § 763.71.

(c) Persons who were importers in 1980 of asbestos mixtures or articles containing asbestos components must complete and submit Parts I and III of EPA Form 7710-37, Reporting Secondary Processing and Importation of Asbestos Mixtures, according to the schedule in § 763.71. When two or more persons meet the definition of "importer" for the same shipment, the principal in the transaction, not his agent or agents, shall report.

(d) Secondary processors of asbestos and importers of asbestos mixtures or articles containing asbestos components must submit a single EPA Form 7710-36, Reporting Commercial and Industrial Use of Asbestos, according to the schedule in § 763.71(c), if selected for further reporting as described in § 763.71(c).

(e) Particular information required on EPA Form 7710-36 which has been previously submitted to the Consumer Product Safety Commission (CPSC) may be referenced in the appropriate place on the form and need not be submitted unless the respondent has informed the CPSC of his objection to any sharing of the data with EPA. Information for years required by EPA, but not by CPSC, must be reported on the EPA Forms.

(f) The following persons are not subject to §§ 763.70 and 763.71.

(1) Secondary processors of asbestos, to the extent that they process an asbestos mixture to repair articles, to construct buildings or other such activities, or to apply, assemble, install, erect, consume, or repackage the mixture without modification.

(2) Persons who are small manufacturers, processors, or importers, as defined in § 763.63(m).

§ 763.70 Records to keep.

(a) *Customer lists.*—(1) All miners, importers, and processors who are subject to § 763.65(a), or who are subject to § 763.65 (b) or (c) and are required to report on EPA Form 7710–36 as part of the sample survey, must maintain records of customers who in 1980 received or purchased asbestos fiber or asbestos-containing products reported on EPA Form 7710–36.

(2) These records must contain the name, address, technical contact, phone number, and the quantity sent for each customer. If the customer is a person who only distributes the substance in commerce, this should be noted.

(b) *Monitoring measurements.* All miners of asbestos and primary processors of asbestos, and those secondary processors of asbestos subject to § 763.65(d) must maintain as required, and make available to EPA upon request:

(1) Records of monitoring measurements performed as required by the Occupational Safety and Health Administration (29 CFR 1910.1001).

2. Records of monitoring measurements performed as required by the Mine Safety and Health Administration (30 CFR 55., 56., or 57.5–1(a)).

(c) If the Deputy Assistant Administrator, Office of Toxic Substances, determines that supplemental information is needed, he/she will require, by certified letter, the submission of information kept for paragraphs (a) and (b) of this section. Customer lists will be required if the Agency needs further information concerning risks that may be presented by the product involved. The Agency may require lists of customers for certain specified products. Monitoring measurements will be required only if the Agency requires further exposure information to determine if the manufacture or processing of asbestos fiber presents a risk to health or the environment.

(1) Customer lists shall be submitted within 30 days of receipt of the certified letter, and shall contain the information required under paragraph (a) of this section.

(2) Monitoring measurements information shall be submitted within 60 days of receipt of the certified letter, and shall contain the information required under paragraph (b) of this section.

(3) The requirements under this section will expire four years after the effective date of this rule.

(4) Information requested by the certified letter must be mailed to: Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460, Attn: Asbestos Report.

§ 763.71 Schedule for reporting.

(a) All miners, primary processors, and importers of bulk asbestos subject to reporting under § 763.65(a) shall submit required data on EPA Form 7710–36 within 60 days after the effective date of this rule.

(b) All secondary processors and importers subject to reporting under §§ 763.65(b) and 763.65(c) shall submit required data on EPA Form 7710–37 within 30 days after the effective date of this rule.

(c) All persons subject to paragraph (b) of this section who are selected for additional reporting shall submit required data on EPA Form 7710–36 within 60 days after receipt of EPA notification to do so. Selections will be made in the following manner. The respondents will be selected using a stratified random sampling technique.[1] First, qualified statisticians will review reports on EPA Form 7710–37 and determine the optimal method to stratify respondents according to the composition of the respondent population. The strata will be defined by all or an appropriate subset of the following variables: the end product; the asbestos mixture that is the starting material in the end product; the volume of the asbestos mixture annually consumed. Respondents will be stratified into as few groups as reasonably possible. The size of the sample will be determined after all respondents have been stratified. EPA intends to require further reporting from the minimum number of respondents possible while still meeting the EPA needs for statistically sound data. A standard random selection technique will be employed to select persons who will be required to complete and submit EPA Form 7710–36. If there are insufficient numbers of respondents in a group to perform a statistically sound sample survey, then all of the respondents in that group will be required to complete EPA Form 7710–36. Notification shall be sent by certified letter, signed by the Deputy Assistant Administrator, Office of Toxic Substances, and will have attached copies of this rule and EPA Form 7710–36. Letters of notification will be sent by EPA no later than three years after the effective date of this rule.

(d) EPA Form 7710–36 and EPA Form 7710–37 can be obtained by writing or telephoning: Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), Washington, DC 20460; Toll free (800–424–9065); In Washington call: (554–1404).

(f) Completed forms must be mailed to: Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Rm. E–447, 401 M St., SW, Washington, DC 20460.

§ 763.74 Confidential business information.

(a) Any person submitting a document under this rule may assert a business confidentiality claim covering all or part of the submitted material unless otherwise instructed on the reporting form. EPA will disclose information covered by a claim only as provided in procedures set forth in 40 CFR Part 2.

(b) Substantiation for a claim made on any item reported under § 763.65 must be made by signing the certification statement as specified in the forms.

(c) If no claim accompanies a document at the time it is submitted to EPA, the document may be placed in an open file available to the public without further notice to the respondent.

§ 763.76 Reporting commercial and industrial use of asbestos.

The following EPA Form 7710–36, Reporting Commercial Industrial Uses of Asbestos, will be completed and submitted to EPA as required in §§ 763.65 and 763.71. Information must be reported on this form to the extent that it is known to or reasonably ascertainable by the respondent.

(a) EPA Form 7710–36 (5–80).

BILLING CODE 6560-31-M

[1] Kish, Leslie, *Survey Sampling.* New York: John Wiley. 1965.

U.S. Environmental Protection Agency

REPORTING INDUSTRIAL AND COMMERCIAL USE OF ASBESTOS

When completed, send form to:

Ms. Joni Repasch
Document Control Officer
Docket No. OPTS 84004
Office of Pesticides and Toxic Substances
(TS-793)
U.S.E.P.A.
401 M Street, S.W.
Washington, D.C. 20460

GENERAL INSTRUCTIONS

This form is divided into parts with different requirements for submitters that depend on whether you mine, mill, import, or process asbestos fiber or mixtures containing asbestos. Before you complete any portions of this form, you should read the definitions and instructions in Part A to determine your reporting responsibilities and your reporting requirements. Secondary processors and some importers DO NOT complete this report unless notified by certified letter. If you cannot determine your reporting requirements, you should call toll free to the Industry Assistance Office, U.S.E.P.A., at (800) 424-9065, or a local call at (202) 554-1404.

Completion of this report is required by a regulation under the general reporting and recordkeeping authority of Section 8(a) of the Toxic Substances Control Act. All data requested in this form must be reported to the extent they are known to or reasonably ascertainable by the submitter. This means that you are expected to answer all questions to the best of your ability based on factual information available in company files. In cases where the requested data is not applicable, enter "N/A" on the page or in the appropriate space. You must enter either the data or "N/A" in all required parts, or the report will be assessed as invalid and returned to you for completion.

If you need additional space to report the required data, you should attach additional copies of the specific part of this form. Identify any continuation by part, line, and column number.

ASSERTING AND SUBSTANTIATING CLAIMS OF CONFIDENTIALITY

Read the section in Part A(3), "Certification and Instructions for Asserting and Substantiating Claims of Confidentiality," for information on how to claim and substantiate confidential business information which is reported on this form or attachments to this form. Claims of confidentiality must be made in accordance with these instructions.

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DEFINITIONS

The following terms are used to describe the subject of the report and who is to report:

Bulk Asbestos (or raw asbestos): means any quantity of asbestos fiber of any type or grade, or combination of types or grades, that is mined or milled with the express purpose to obtain asbestos. This term does not include asbestos that is produced or processed as a contaminant or an impurity. Asbestos is a group of naturally occurring, inorganic, highly fibrous, silicate minerals, which are easily separated into long, thin, flexible fibers when crushed or processed. Included in the defintion are the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

Asbestos Mixture: means a mixture or other material to which bulk asbestos or another asbestos mixture has been intentionally added. An asbestos mixture can be utilized as a finished product or incorporated into other products. Some examples of asbestos mixtures are: A/C pipe; asbestos textiles; asbestos friction material; and asbestos paper.

Asbestos Component: means any asbestos mixture or any finished product containing an asbestos mixture which is incorporated into an article. Some examples of asbestos components are: Brake shoes in an automobile; an asbestos-reinforced plastic cabinet for a television; asbestos paper insulation in an appliance; garments made in whole or in part of asbestos textile(s).

MINE AND MILL DEFINITIONS

Miner: means a person who either mines or mills asbestos. Mined or extracted asbestos-containing ore is further milled to produce bulk asbestos for distribution in commerce. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore.

PROCESSOR DEFINITIONS

Asbestos Starting Material: means either bulk asbestos or an asbestos mixture, depending on the kind of processor making the report. A Primary Processor starts with bulk asbestos, and a Secondary Processor starts with an asbestos mixture.

Primary Processor: means a person whose asbestos starting material is bulk asbestos, which is processed to make an asbestos mixture. A Primary Processor may simply mix or repackage different types of grades of fiber and then sell that product. A Primary Processor may further process the asbestos mixture like a Secondary Processor (see below). A person who is a Primary Processor will report all activities that involve asbestos on this form.

Secondary Processor: means a person whose asbestos starting material is an asbestos mixture, which is incorporated into that person's own product. For instance, asbestos millboard may be purchased by a secondary processor, who could cut that millboard and incorporate it into an appliance; A/C sheet may be purchased by a secondary processor, who could fabricate it to make the backing for an electrical switchboard.

IMPORTER DEFINITIONS

Importer of Bulk Asbestos: means a person who imports bulk asbestos into the customs territory of the U.S. An importer of bulk asbestos will report all activities that involve asbestos on this form.

Importer of Asbestos Mixtures: means a person who imports asbestos mixtures into the customs territory of the U.S. Imported mixtures include merchandise declared to the U.S. Customs Service upon entry as Tariff Schedule of the United States, Annotated, numbers (TSUSA Number) 518.2-518.5, or other TSUSA Numbers which may pertain to asbestos mixtures.

Importer of Article(s) Containing Asbestos Component(s): means a person who imports an article that contains one or more asbestos components (see definition above).

A(1). RESPONDENT ACTIVITY

Identify your activity using the preceding definitions and check the line next to category below that best describes your activity(ies). You must at least complete the portions of this report that are indicated next to the box you check, and you must complete other sections if you conduct that activity.

_____Mine and Mill
Complete Parts A, B(1), G, H, I, J, K.

_____Primary Processor
Complete Parts A, B(3), C, G, H, I, J, K.

_____Secondary Processor
Complete Parts A, D, G, H, I, J, K.

_____Importer of Bulk Asbestos
Complete Parts A, B(2), G, H, I.

_____Importer of Asbestos Mixtures
Complete Parts A, E, G, H, I.

_____Importer of Article(s) Containing Asbestos Component(s)
Complete Parts A, F, G, H, I.

NOTE: Reporting will be in two phases.

1. All persons who are miners, millers, primary processors or importers of bulk asbestos must report all of their activities involving asbestos on this form in the first phase.

2. All persons who are solely secondary processors, importers of asbestos mixtures, or importers of articles containing asbestos components will report in the first phase on EPA Form 7710-37 , titled "Secondary Processing and Importation of Asbestos Mixtures."

   These persons will report in this form, EPA Form 7710-36, only upon receipt of notice to that effect from EPA. (See 40 CFR 763, Part D)

A(2). PRODUCT IDENTIFICATION

Check the appropriate category(ies) in items 2 and 3 that best describe the product(s) of the reporting site.

Check only one category for each product made.

PROCESSORS

You must classify all products you make according to the asbestos starting material you process to make your end product. If the product manufacturing process at your plant site uses bulk asbestos as the starting material for the end product, you are a Primary Processor and should check a product name listed under "Typical Terms for Products Made From Bulk Asbestos."

If the product manufacturing process at your plant site uses an asbestos mixture made elsewhere as a starting material for the end product, then check a product name listed under "Typical Terms for Products Made From Asbestos Mixtures."

Primary Processors who first make an asbestos mixture that is then processed on site to make a product should report that portion of production as Primary Production and check that product as starting with bulk asbestos (e.g., an asbestos and resin mixture which is further processed to make a molded brake lining; or an asbestos and hydraulic cement mixture which is further processed to make A/C sheet; or an asbestos felt which is further processed to make a backing for asbestos felt-backed vinyl flooring; or an asbestos and paint mixture is reformulated by adding a rust proofing chemical to make a certain kind of surface coating). Persons who are solely Secondary Processors must check a product or list the name of the product as starting with an asbestos mixture. The list of products made from asbestos mixtures is only illustrate, and you should list and specify the name of all products which incorporate an asbestos mixture if the product name is not listed.

IMPORTERS

You must classify all imported products according to the type(s) of asbestos you import. If you import Bulk Asbestos, you will not check a product below unless you are also a Primary or Secondary Processor. Persons who import bulk asbestos, but do not process the asbestos, should complete Part B(2) of this report. If you import an asbestos mixture or an article containing asbestos component(s), you should select the most appropriate product name from the lists below that most specifically describes each product. Products you import that you know contain asbestos, but are not on the list, should be specified.

A(2). PRODUCT IDENTIFICATION

2. TYPICAL TERMS FOR PRODUCTS MADE FROM BULK ASBESTOS

PAPERS, FELTS, OR RELATED PRODUCTS

___01. Commercial paper
___02. Rollboard
___03. Millboard
___04. Pipeline wrap
___05. Beater-add gasketing paper
___06. High-grade electrical paper
___07. Unsaturated roofing felt
___08. Saturated roofing felt
___09. Speciality paper or felt
___10. Saturated paper or felt
___11. Corrugated paper

FLOOR COVERINGS

___12. Vinyl-asbestos floor tile
___13. Asbestos-felt-backed vinyl flooring

ASBESTOS-CEMENT PRODUCTS

___14. A/C pipe
___15. A/C pipe, fittings
___16. A/C sheet, flat
___17. A/C sheet, corrugated
___18. A/C shingle
___19. A/C siding

FRICTION MATERIALS

___20. Brake linings, molded (light vehicle)
___21. Brake linings, molded (heavy equipment)
___22. Brake linings, woven (light vehicle)
___23. Brake linings, woven (heavy equipment)
___24. Disc brake pads (light vehicles)
___25. Disc brake pads or blocks (heavy equip.)
___26. Clutch plate facing, woven
___27. Clutch plate facing, molded
___28. Transmission components (automotive)
___29. Friction materials for industrial, commercial and consumer machinery

TEXTILES

___30. Cloth
___31. Thread, yarn, roving, cord, rope or wick
___32. Lap

OTHER PRODUCTS

___34. Sheet Gasketing (other than beater-add paper)
___35. Paints and surface coating
___36. Resins, Adhesives and sealants
___37. Asphaltic compounds
___38. Asbestos reinforced plastics
___39. Insulation materials not elsewhere classified (n.e.c.)
___40. Mixed or repackaged asbestos fiber
___41. Other, n.e.c. (specify)

3. TYPICAL TERMS FOR PRODUCTS MADE FROM ASBESTOS MIXTURES

___01. Aerial distress flares
___02. Acoustical products
___03. Aluminized cloth
___04. Ammunition wadding
___05. Appliance (specify appliance)
___06. Aprons
___07. Arc deflectors
___08. Rope/yarn/braiding
___09. Lap
___10. Wick
___11. Ash trays
___12. Asphaltic coatings
___13. Automotive/truck body coatings
___14. Automotive gaskets
___15. Bags
___16. Baking sheets
___17. Belting
___18. Blackboards
___19. Blankets
___20. Boiler and furnace baffles
___21. Boots
___22. Brake linings, molded (light vehicles)
___23. Brake linings, molded (heavy vehicles)
___24. Brake linings, woven (light vehicles)
___25. Brake linings, woven (heavy vehicles)
___26. Buffing and polishing compounds
___27. Cable insulation
___28. Candlesticks
___29. Carpet padding
___30. Caulking/patching compounds
___31. Caulks, marine
___32. Chemical tanks and vessels
___33. Cigarette lighter wicks
___34. Clothing (other)
___35. Clutch facings, molded
___36. Clutch facings, woven
___37. Commercial/industrial dryer felts
___38. Compressed sheet gaskets
___39. Custom automotive body filler
___40. Decorated building panels
___41. Disc brake pads
___42. Draperies
___43. Drilling fluid
___44. Drip cloths for molten ceramics/metals
___45. Electronic motor components
___46. Electrical resistance supports
___47. Electrical switchboards
___48. Electrical switch supports
___49. Electrical wire insulation
___50. Filters
___51. Fire doors
___52. Fire hoses
___53. Fireproof absorbent paper
___54. Flashing cement
___55. Flat sheets
___56. Flexible air conductor
___57. Flooring, asbestos felt-based, sheet or tile
___58. Furnace cement
___59. Gaskets
___60. Gaskets, metal reinforced
___61. Glazing compounds
___62. Gloves
___63. Grommets
___64. Gun grips
___65. Hats and helmets
___66. Heater element supports
___67. Heat resistant mats, table pads
___68. Heat shields
___69. Hoods, vents
___70. Injection molded platics
___71. Insulation, other (specify)
___72. Ironing board pads and insulation
___73. Iron rests
___74. Jewelry making equipment
___75. Kilns
___76. Laboratory equipment
___77. Lamp sockets
___78. Linings for vaults, safes, humidifiers, and filing cabinets
___79. Liners, pond and canal
___80. Mantles, lamp or catalytic heater
___81. Marine bulkheads
___82. Mittens
___83. Molded asbestos reinforced plastics
___84. Molten metal handling equipment
___85. Motor armature
___86. Mufflers
___87. Oven and stove insulation
___88. Overgaiters
___89. Packing
___90. Packing components
___91. Paints, textured
___92. Phonograph records
___93. Piano and organ felts
___94. Pipe wrap
___95. Plaster and stucco
___96. Portable construction building
___97. Pottery clay
___98. Radiator top insulation
___99. Radiator sealant
___100. Pump and valve seals
___101. Roof coatings
___102. Roofing, saturated
___103. Roofing, unsaturated
___104. Roof shingles
___105. Rugs
___106. Sleeves
___107. Stove lining, coal or wood
___108. Stove pipe rings
___109. Suits
___110. Switchboards and components
___111. Tape
___112. Theater curtains or draperies
___113. Thermal insulation
___114. Tile cement
___115. Transmissions and components
___116. Umbrellas
___117. Valve, flange, tank sealing components
___118. Vinyl asbestos floor tile
___119. Wallboard
___120. Wall/roofing panels
___121. Welding rod coatings
___122. Other (specify)

A(3). CERTIFICATION AND INSTRUCTIONS FOR ASSERTING AND SUBSTANTIATING CLAIMS OF CONFIDENTIALITY FOR FORM 7710-36

Introduction

These are the instructions for asserting and substantiating claims of confidentiality for any information you submit in this Commerical and Industrial Use of Asbestos Fibers Report. (EPA Form 7710-36--"Reporting Industrial and Commercial Use of Asbestos Fibers"--will be referred to as the "Form.") You may request confidential treatment for specific items of information you submit, which are entered on the form, or in attachments to the form.

To make this request, you must follow the procedures set out in these instructions.

1. To assert a claim of confidentiality, identify the information that you claim to be confidential. You must do this in accordance with these instructions, at the time you submit this form. Any information you do not claim as confidential will be included in the public record, without further notice to you.

2. For some specific information contained in the form, you will be required to substantiate your claims of confidentiality at the time you submit the form. Otherwise, EPA may determine that you have waived your claims, and may then release the information in question, in accordance with section 763.76 of this rule.

If you assert a claim of confidentiality and you substantiate that claim, EPA will disclose the information only as provided in the Agency's confidentiality regulations which appear in 40 CFR, Part 2, as amended on September 8, 1978 (43 FR 39997), and March 23, 1979 (44 FR 17673). Those regulations include provisions stating that, with specific exceptions, EPA will maintain the confidentiality of information claimed as confidential until the EPA Office of General Counsel makes a final determination that certain information is not entitled to confidential treatment. If confidentiality is denied, the submitter will receive written notice 30 days before the date that EPA will make the information available to the public.

Organization of these Instructions

Specific Instructions

To assert a claim of confidentiality for information in this form, you must place a check on the appropriate line of the form in which the confidential data fall. For information which you submit in attachments to the form, provide a copy which clearly indicates (e.g., by circling, bracketing, etc.) the information you wish to claim confidential.

In addition to asserting claims of confidentiality, you must substantiate these claims. To do this, the person who signs the form must certify the truth and accuracy of the following four statements which apply to all information claimed as confidential. (Note: The certification is only to be signed once for the entire form and attachments.)

1. My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures.

2. The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding) without my company's consent.

3. The information is not publicly available elsewhere.

4. Disclosure of the information claimed as confidential would cause substantial harm to my company's competitive position.

10. Signature of Authorized Official
Date

A(4). RESPONDENT IDENTIFICATION

4. COMPANY NAME: _____ (COMPANY NAME)

_____ (PLANT SITE NAME)

ADDRESS: _____ (NUMBER AND STREET) (CITY) (COUNTY) (STATE) (ZIP CODE)

5. PRINCIPAL TECHNICAL CONTACT PERSON: _____ (NAME) _____ (NAME OF OFFICE) ( ) _____ EXT.: (OFFICE TELEPHONE)

6. DUN AND BRADSTREET NUMBER - Enter the Dun & Bradstreet number that has been designated for the location reported on this form. If there is no number, report the Dun and Bradstreet number for the company responsible for the daily management of the reporting site.

(DUN AND BRADSTREET NUMBER)

7. IF APPLICABLE: Record Mine identification number.

_____ (MINE ID#)

8. IF APPLICABLE: Record the name and Ultimate Dun and Bradstreet number of the Parent Corporation which is responsible for the fiscal management of the reporting site.

_____ (NAME OF PARENT CORPORATION)

(ULTIMATE DUN AND BRADSTREET NUMBER FOR PARENT CORPORATION)

9. Record the total number of years during which the manufacture and/or processing of asbestos has been conducted at the reporting site.

_____ (NUMBER OF YEARS)

B. BULK ASBESTOS

11. List in short tons the amount of bulk asbestos produced, imported, obtained domestically (purchase or transfer), or exported for each year s 1971. A firm performing more than one activity will complete all appropriate forms for each plant site. Chrysotile should be reported by tl Quebec Standard Test (QST) Grade.

(NOTE--THIS SECTION MUST BE COMPLETED SEPARATELY FOR EACH APPLICABLE ACTIVITY (1, 2, 3, 4). SEPARATE ACTIVITIES INCLUDE PRODUCTION, IMPORTA OBTAINING, AND EXPORTATION. Importation may be reported on a plant site basis or consolidated in one report for all corporate activities.)

Apply the following instructions in completing this section.

1. Persons who domestically mine or mill asbestos will complete B(1).

2. Persons who import bulk asbestos will complete B(2). Report all imports for merchandise entering the U.S. customs territory that are declared under Tariff Schedule of the United States, Annotated (TSUSA) numbers 518.1110-518.1160.

3. Persons who obtain (domestically purchase or accept transfer) bulk asbestos will complete B(3). As a reminder, all bulk asbestos imp are to be reported on B(2).

4. Persons who export bulk asbestos will complete B(4).

CONSOLIDATED REPORTS: Firms have the choice to consolidate the data on one form for all company imports and exports, or to report imports a exports for each plant site. When you complete B(2) and B(4), check the box to indicate that this is either a Consolidated Corporate Report Plant Site Report.

B(1). PRODUCTION

QUANTITY OF BULK ASBESTOS MINED OR MILLED

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

YEAR	Chrysotile (QST Grade)						Crocidolite	Amosite	Anthophyllite Asbestqs	Tremolite Asbestos	Actinolite Asbestos	Confidenti.
	1 - 2	3	4 - 5	6	7	8 - 9						
1971												
1972												
1973												
1974												
1975												
1976												
1977												
1978												
1979												
1980												

Short Tons

B(2). IMPORTATION

QUANTITY OF BULK ASBESTOS IMPORTED

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

CHECK ONE:
This is a Corporate Consolidated Report. _____
This is a Plant Site Report. _____

YEAR	Chrysotile (QST Grade)						Crocidolite	Amosite	Anthophyllite Asbestos	Tremolite Asbestos	Actinolite Asbestos	Confidential
	1 - 2	3	4 - 5	6	7	8 - 9						
1971												
1972												
1973												
1974												
1975												
1976												
1977												
1978												
1979												
1980												

Short Tons

B(3). OBTAIN (PURCHASE OR TRANSFER)

QUANTITY OF BULK ASBESTOS OBTAINED

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

YEAR	Chrysotile (QST Grade)						Crocidolite	Amosite	Anthophyllite Asbestos	Tremolite Asbestos	Actinolite Asbestos	Confidentia
	1 - 2	3	4 - 5	6	7	8 - 9						
1971												
1972												
1973												
1974												
1975												
1976												
1977												
1978												
1979												
1980												

Short Tons

B(4). EXPORTATION

QUANTITY OF BULK ASBESTOS EXPORTED

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

CHECK ONE:
This is a Corporate Consolidated Report. _____
This is a Plant Site Report. _____

YEAR	Chrysotile (QST Grade)						Crocidolite	Amosite	Anthophyllite Asbestos	Tremolite Asbestos	Actinolite Asbestos	Confidential
	1 - 2	3	4 - 5	6	7	8 - 9						
1971												
1972												
1973												
1974												
1975												
1976												
1977												
1978												
1979												
1980												

Short Tons

C. PRIMARY PROCESSOR PRODUCTION

12. List separately the end products you make that are shipped from your plant site and that incorporate bulk asbestos as a starting material. Report products using the categories listed below or specify the name of the end product if it does not fall within the categories listed below. Report here products whose asbestos starting material is bulk asbestos, even if an asbestos mixture is first made and then that asbestos mixture is incorporated into the end product. DO NOT report the production of asbestos mixtures that are incorporated into an end product on site and are not shipped separately as end products. Instead, report the production of the end product. If you make a product which incorporates an asbestos mixture made elsewhere, then you must report that product in Part D as Secondary Processor Production.

As an example, a primary processor making asbestos-felt-backed sheet vinyl flooring may first process bulk asbestos to make the asbestos felt (asbestos mixture) at the site, and then the felt is bonded to the vinyl to make the sheet vinyl flooring (end product). If the processor also sells a portion of the asbestos felt, then that processor should report the production of: (1) asbestos-felt-backed sheet vinyl flooring, and (2) asbestos felt. If, however, the processor obtains asbestos felt made elsewhere and then processes the felt to make the flooring, the production of the flooring should be reported in Part D as a Secondary Processor.

At the bottom of the chart for Part C, estimate the percentage of plant site sales that concern primary processor production.

If you make more than five products, report those products on additional copies of this form.

SPECIFIC INSTRUCTIONS:

1. End Product Shipped

Record each end product in a separate box for each product whose starting material is bulk asbestos and is shipped from the plant site. For each product (from the list below), list the trade name(s) under which the product is marketed. List all "private brands" under which your products are labeled and the names of the companies for whom labels are applied to the end product.

2. Asbestos Consumption

Record the average fiber type(s) and grades (as listed in Part B) which is, or has been used, in the production of the article category. The size of the fiber should be coded by the Quebec Standard Test. If QST values are unknown, specify and record fiber by average length in microns. Enter the total quantity of asbestos fiber consumed in the production of the reported asbestos material, regardless of fiber type. Quantities consumed from 1976 to present should be reported in short tons.

3. Total Annual Production

Record the total annual production for each listed asbestos material which has been produced at the site since January 1976. Production quantities will be expressed in the following units of measure, as used by the Bureau of Census: (IF CENSUS UNITS ARE NOT APPLICABLE, REPORT PRODUCTION IN SHORT TONS)

4. Value Shipped

Record the total annual value shipped (U.S. dollars) for each product since January 1976. These figures must be separated to show Domesti sales and Export sales (sold for distribution outside the U.S. Customs territory). If the breakdown is unknown, report sales under Domestic sales.

The valuation of products shipped should be based on the net selling value, f.o.b. plant, after discounts and allowances, and exlcusive o freight charges and excise taxes.

When transferring products to other establishments within your company, the shipping plant should assign the full economic value to the transferred products. Include all direct costs of production and a reasonable proportion of all other costs and profits. Figures should be reported in thousands of dollars.

TYPICAL TERMS FOR PRODUCTS MADE FROM BULK ASBESTOS

PAPERS, FELTS, OR RELATED PRODUCTS	SUGGESTED UNITS OF MEASURES
01. Commerical paper	short tons
02. Rollboard	short tons
03. Millboard	short tons
04. Pipeline wrap	short tons
05. Beater-add gasketing paper	short tons
06. high-grade electrical paper	short tons
07. Unsaturated roofing felt	short tons
08. Saturated roofing felt	short tons
09. Speciality paper or felt	short tons
10. Saturated paper or felt	short tons
11. Corrugated paper	short tons
FLOOR COVERINGS	
12. Vinyl-asbestos floor tile	square yards
13. Asbestos-felt-backed vinyl flooring	square yards
ASBESTOS-CEMENT PRODUCTS	
14. A/C pipe	short tons
15. A/C pipe, fittings	short tons
16. A/C sheet, flat	hundred square feet
17. A/C sheet, corrugated	hundred square feet
18. A/C shingle	squares
19. A/C siding	squares

FRICTION MATERIALS	SUGGESTED UNITS OF MEASURES
20. Brake linings, molded (light vehicle)	cubic feet
21. Brake linings, molded (heavy equipment)	cubic feet
22. Brake linings, woven (light vehicle)	linear feet
23. Brake linings, woven (heavy equipment)	linear feet
24. Disc brake pads (light vechicles)	pieces
25. Disc brake pads or blocks (heavy equip.)	pieces
26. Clutch plat facing, woven	pieces
27. Clutch plate facing, molded	pieces
28. Transmission components (automotive)	pieces
29. Friction materials for industrial, commercial and consumer machinery	cubic feet
TEXTILES	
30. Cloth	pounds
31. Thread, yarn, roving, cord, rope or wick	pounds
32. Lap	pounds
OTHER PRODUCTS	
33. Sheet gasketing (other than beater-add paper)	square yards
34. Molded packing or gasketing	pounds
35. Paints and sufrace coating	gallons
36. Resins, adhesives and sealants	gallons
37. Asphaltic compounds	gallons
38. Asbestos reinforced plastics	pounds
39. Insulation materials not elsewhere classified (n.e.c.)	-------
40. Mixed or repackaged asbestos fiber	short tons
41. Other, n.e.c. (specify)	-------

C. PRIMARY PROCESSOR PRODUCTION

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

ARTICLE #	(1) END PRODUCT SHIPPED (TRADE NAME[S])	(2) ASBESTOS CONSUMPTION		YEAR	PRODUCT SHIPMENTS				CONFIDENTIAL
		ASBESTOS FIBER TYPE GRADE (QST OR MICRON)	QUANTITY (SHORT TON)		(3) TOTAL ANNUAL PRODUCTION		(4) VALUE SHIPPED--THOUSANDS OF DOLLARS		
					QUANTITY	CENSUS UNIT OF MEASURE	DOMESTIC	EXPORTS	
1				1976					
				1977					
				1978					
				1979					
				1980					
2				1976					
				1977					
				1978					
				1979					
				1980					
3				1976					
				1977					
				1978					
				1979					
				1980					
4				1976					
				1977					
				1978					
				1979					
				1980					
5				1976					
				1977					
				1978					
				1979					
				1980					

ESTIMATE THE PERCENTAGE OF THE TOTAL VALUE SHIPPED FROM THE PLANT SITE REPORTED HERE AS PRIMARY PROCESSOR PRODUCTION: _____%

C. PRIMARY PROCESSOR PRODUCTION

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

ARTICLE #	(1) END PRODUCT SHIPPED (TRADE NAME[S])	(2) ASBESTOS CONSUMPTION		YEAR	PRODUCT SHIPMENTS				CONFIDENTIAL
		ASBESTOS FIBER TYPE GRADE (QST OR MICRON)	QUANTITY (SHORT TON)		(3) TOTAL ANNUAL PRODUCTION		(4) VALUE SHIPPED--THOUSANDS OF DOLLARS		
					QUANTITY	CENSUS UNIT OF MEASURE	DOMESTIC	EXPORTS	
6				1976					
				1977					
				1978					
				1979					
				1980					
7				1976					
				1977					
				1978					
				1979					
				1980					
8				1976					
				1977					
				1978					
				1979					
				1980					
9				1976					
				1977					
				1978					
				1979					
				1980					
10				1976					
				1977					
				1978					
				1979					
				1980					

ESTIMATE THE PERCENTAGE OF THE TOTAL VALUE SHIPPED FROM THE PLANT SITE REPORTED HERE AS PRIMARY PROCESSOR PRODUCTION: _____ %

D. SECONDARY PROCESSOR PRODUCTION

13. List separately the products that are shipped from your plant site as end products and which incorporate an asbestos mixture as a starting material. You should report as a Secondary Processor if you obtain from elsewhere an asbestos mixture or material that you then process. If you start with bulk asbestos, you should report as a Primary Processor.

At the bottom of the chart for this Part, estimate the percentage of plant site sales that concern Secondary Processor Production.

If you make more than five products, report those products on additional copies of this form.

SPECIFIC INSTRUCTIONS:

1. End Product Shipped

Record each end product in a separate box for each product line that is identified in the first part of this report. For each product line, list the trade name(s) under which the product is marketed. For each end product, list all "private brands" under which the product is labeled and the names of the companies for whom the labels are applied.

2. Total Annual Production (Quantity by Census Unit of Measure)

Record the total production of the product at this plant site for each year since January 1976. Production quantities should be reported in the unit of measure which was used by the U.S. Department of Commerce, Bureau of the Census, for the 1977 Census of Manufacturers.

3. Asbestos Starting Material Consumed and Form

Record the name (provide generic and trademark name) of the asbestos material which is used to produce the end product. If only the trademark name is known, provide the name of the manufacturer. Indicate the form in which the asbestos starting material is purchased (e.g., roll of paper, 3' x 5' sheets, reams of 8" x 11" sheets).

4. Function of the Asbestos in Your Product

Provide a brief narrative description of the function of the asbestos in your product and the product specifications which require use of asbestos. Examples of possible asbestos functions are: rot resistance, insulation, filler, and tensile strength. SPECIFY THE ASBESTOS FUNCTION(S) FOR EACH PRODUCT.

5. Annual Consumption of Starting Asbestos Materials

Record the total annual quantity and specify Census unit of measure and the total annual cost (in U.S. dollars) of the asbestos starting materials consumed since January 1976. (IF CENSUS UNITS ARE NOT APPLICABLE, REPORT IN SHORT TONS)

The value of the materials consumed should be based on the delivered cost, i.e., the amount paid or payable after discounts and including freight and other direct charges incurred in acquiring the materials. Charges include purchases, transfers from other establishments of your company, and withdrawals from inventories.

Materials transferred to you from other plants within your company should be assigned their full economic value, as assigned by the shipping plant, plus cost of freight and handling charges. Figures should be reported in thousands of dollars.

TYPICAL TERMS FOR PRODUCTS MADE FROM ASBESTOS MIXTURES

01. Aerial distress flares
02. Acoustical products
03. Aluminized cloth
04. Ammunition wadding
05. Appliance (specify Appliance)
06. Aprons
07. Arc deflectors
08. Rope/yarn/braiding
09. Lap
10. Wick
11. Ash trays
12. Asphaltic coatings
13. Automotive/truck body coatings
14. Automotive gaskets
15. Bags
16. Baking sheets
17. Belting
18. Blackboards
19. Blankets
20. Boiler and furnace baffles
21. Boots
22. Brake linings, molded (light vehicle)
23. Brake linings, molded (heavy equipment)
24. Brake linings, woven (light vehicle)
25. Brake linings, woven (heavy equipment)
26. Buffing and polishing compound
27. Cable insulation
28. Candlesticks
29. Carpet padding
30. Caulking/patching compounds
31. Caulks, marine
32. Chemical tanks and vessels
33. Cigarette lighter wicks
34. Clothing (other)
35. Clutch facings, molded
36. Clutch facings, woven
37. Commercial/industrial dryer felts
38. Compressed sheet gaskets
39. Custom automotive body filler
40. Decorated building panels
41. Disc brake pads
42. Draperies
43. Drilling fluid
44. Drip cloths for molten ceramics/metals
45. Electronic motor components
46. Electrical resistance supports
47. Electrical switchboards
48. Electrical switch supports
49. Electrical wire insulation
50. Filters
51. Fire doors
52. Fire hoses
53. Fireproof absorbent paper
54. Flashing cement
55. Flat sheets
56. Flexible air conductor
57. Flooring, asbestos felt-based sheet or tile
58. Furnace cement
59. Gaskets
60. Gaskets, metal reinforced
61. Glazing compounds
62. Gloves
63. Grommets
64. Gun grips
65. Hats and helmets
66. Heater element supports
67. Heat resistant mats, table pads
68. Heat shields
69. Hoods, vents
70. Injection molded plastics
71. Insulation, other (specify)
72. Ironing board pads and insulation
73. Iron rests
74. Jewelry making equipment
75. Kilns
76. Laboratory equipment
77. Lamp sockets
78. Linings for vaults, safes, humidifiers, and filing cabinets
79. Liners, pond and canal
80. Mantles, lamp or catalytic heater
81. Marine bulkheads
82. Mittens
83. Molded asbestos reinforced plastics
84. Molten metal handling equipment
85. Motor armature
86. Mufflers
87. Oven and stove insulation
88. Overgaiters
89. Packing
90. Packing components
91. Paints, textured
92. Phonograph records
93. Piano and organ felts
94. Pipe wrap
95. Plaster and stucco
96. Portable construction building
97. Pottery clay
98. Radiator top insulation
99. Radiator sealant
100. Pump and valve seals
101. Roof coatings
102. Roofing, saturated
103. Roofing, unsaturated
104. Roof shingles
105. Rugs
106. Sleeves
107. Stove lining, coal or wood
108. Stove pipe rings
109. Suits
110. Switchboards and components
111. Tape
112. Theater curtains or draperies
113. Thermal insulation
114. Tile cement
115. Transmissions and components
116. Umbrellas
117. Valve, flange, tank sealing components
118. Vinyl asbestos floor tile
119. Wallboard
120. Wall/roofing panels
121. Welding rod coatings
122. Other (specify): _____

_____

_____

D. SECONDARY PROCESSOR PRODUCTION

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

ARTICLE #	(1) END PRODUCT SHIPPED (TRADE NAME[S])	(2) TOTAL ANNUAL PRODUCTION YEAR	QUANTITY	CENSUS UNIT OF MEASURE	(3) ASBESTOS STARTING MATERIAL CONSUMED AND FORM	(4) FUNCTION OF ASBESTOS IN PRODUCT	(5) ANNUAL CONSUMPTION OF ASBESTOS STARTING MATERIALS YEAR	QUANTITY	CENSUS UNIT OF MEASURE	DELIVERED COST (THOUSANDS OF DOLLARS)	CONFIDENTIAL
1		1976					1976				
		1977					1977				
		1978					1978				
		1979					1979				
		1980					1980				
2		1976					1976				
		1977					1977				
		1978					1978				
		1979					1979				
		1980					1980				
3		1976					1976				
		1977					1977				
		1978					1978				
		1979					1979				
		1980					1980				
4		1976					1976				
		1977					1977				
		1978					1978				
		1979					1979				
		1980					1980				
5		1976					1976				
		1977					1977				
		1978					1978				
		1979					1979				
		1980					1980				

ESTIMATE THE PERCENTAGE OF THE TOTAL VALUE SHIPPED FROM THE PLANT SITE REPORTED HERE AS SECONDARY PROCESSOR PRODUCTION: _____ %

E. IMPORTATION OF ASBESTOS MIXTURES

13. List, by product, the imported asbestos mixture(s). (See definitions of asbestos mixture and Importer of Asbestos Mixture). If you have more than five materials to report, attach additional copies of the form.

SPECIFIC INSTRUCTIONS:

1. Asbestos Mixtures

Record each asbestos mixture in a separate box for each product checked or listed in the first part of this report. List the trade nam or label(s) for the mixture or material.

2. Asbestos Fiber Content

Record the type of asbestos fiber in the imported asbestos material and enter the total quantity of asbestos in a unit (the unit used t report quantity imported). The quantity of asbestos should be reported in pounds.

3. Total Annual Imports

Record the total annual quantity imported for each listed product since 1976. Quantities will be expressed in the units of measure lis below that are used by the U.S. Bureau of the Census or according to the unit used to report upon importation to the U.S. Customs Servi

Record the total annual value imported (U.S. dollars) for each product since January 1976. This figure can be drawn from the U.S. Cust Service entry forms as the "Entered Value in U.S. Dollars" or "Value."

E. IMPORTATION OF ASBESTOS MIXTURES

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

ARTICLE #	(1) ASBESTOS MIXTURES (GENERIC AND TRADE NAME[S])	(2) ASBESTOS FIBER CONTENT		YEAR	TOTAL ANNUAL IMPORTS			(5) CONFIDENTIAL
		TYPE ASBESTOS	QUANTITY (PER UNIT)		(3) QUANTITY	CENSUS UNIT OF MEASURE	VALUE OF IMPORTS (U.S. DOLLARS)	
1				1976				
				1977				
				1978				
				1979				
				1980				
2				1976				
				1977				
				1978				
				1979				
				1980				
3				1976				
				1977				
				1978				
				1979				
				1980				
4				1976				
				1977				
				1978				
				1979				
				1980				
5				1976				
				1977				
				1978				
				1979				
				1980				

F. IMPORTATION OF ARTICLE(S) CONTAINING ASBESTOS COMPONENT(S)

14. List, by product, the articles containing an asbestos component which you import.

THIS FORM CONTAINS SPACE TO REPORT FIVE PRODUCT CATEGORIES. FOR ADDITIONAL CATEGORIES, ATTACH ADDITIONAL COPIES OF THE FORM.

(IF INAPPLICABLE, SKIP TO ITEM 15)

SPECIFIC INSTRUCTIONS:

1. Article Name

Record each product on a separate line for each item identified in Part A of this report. List the trade name(s) or label(s) for the products.

2. Total Annual Imports

Record the total number of units which have been imported for each year since January 1976. Quantities will be reported in the unit measure which was used to declare the merchandise upon entry into the U.S. or by the U.S. Bureau of Census, for the 1977 Census of Manufacturers. Entry the value of the imported merchandise in U.S. dollars.

3. Asbestos Component(s)

List all asbestos components which are contained in the imported article by listing the name of the asbestos component or describing type of asbestos material which is the component. For example, an imported car would be listed as the "Article," and the asbestos component could be either "brake shoes" or "asbestos-containing friction materials."

F. IMPORTATION OF ARTICLE(S) CONTAINING ASBESTOS COMPONENT(S)

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

ARTICLE #	(1) ARTICLE NAME (AND TRADE NAME[S])	(2) TOTAL ANNUAL IMPORTS				(3) ASBESTOS COMPONENT(S)	CONFIDENTIAL
		YEAR	QUANTITY	UNIT OF MEASURE	VALUE (U.S. DOLLARS)		
1		1976					
		1977					
		1978					
		1979					
		1980					
2		1976					
		1977					
		1978					
		1979					
		1980					
3		1976					
		1977					
		1978					
		1979					
		1980					
4		1976					
		1977					
		1978					
		1979					
		1980					
5		1976					
		1977					
		1978					
		1979					
		1980					

G. EMPLOYEES

15. Classify all employees into the following categories. In items 2-5, COUNT EMPLOYEES IN ONLY ONE CATEGORY.

1. Total Number of Employees. Enter the total number of employees who worked at the reporting plant site during 1980. This number will include all employees, regardless of the job performed or the number of hours worked per year.

2. Number of Production Employees. Enter the number of production employees who work in areas where ASBESTOS IS MANUFACTURED OR PROCESSED. This number will not include plant site production employees who work in separate areas where no asbestos fiber or asbestos product is processed. This number will represent a head count of employees, regardless of the number of hours worked per year.

3. Number of Shipping, Receiving, and Moving Employees. Enter the number of employees involved with shipping, receiving, or moving of asbestos fiber or asbestos-containing products.

4. Number of Maintenance Employees. Enter the number of maintenance employees who perform maintenance tasks in work areas where asbestos fiber, asbestos products, or asbestos waste are processed, stored, or moved.

5. Number of Other Employees. Enter the number of other employees at the location that are not counted in items 2-4.

G. EMPLOYEES

Record the number of employees at the reporting site in each of the categories below.

If you claim the number of employees to be confidential, mark (X) in the box at the right.

		NUMBER OF EMPLOYEES	CONFIDENTIAL
1.	Total Number of Employees at Plant Site (Sum 2,3,4,5)		
2.	Number of Production Employees		
3.	Number of Employees in Shipping, Receiving, and Moving		
4.	Number of Maintenance Employees		
5.	Number of Other Employees		

G(2). PRODUCTION EMPLOYEE

16. For each Product Line, enter the number of workers who perform the production operations listed below. Only count the employees who you counted as production workers in item 2 of chart 15a. Each employee is to be counted only one time and will be counted in the operation and product line that is the employee's primary assignment. The number of production employees entered in item 2 of chart 15a must equal the sum of all production employees listed below.

You will divide production employees into categories that indicate different possible levels of exposure to asbestos. Primary Processor workers who handle the bulk or raw asbestos fiber will be counted under Fiber Introduction Operations. Employees of either Primary Processors or Secondary Processors who work at an operation that involves some sort of machining, cutting, or modification where asbestos fiber may be released will be counted under either Wet Mechanical Operation or Dry Mechanical Operation, depending on whether the operation uses some method to keep the asbestos-containing material wet during the operation. Employees will be counted in one of the mechanical operation categories if their primary job is to control or work with the tool or machinery performing the operation. Other production employees who work on processing lines or in support of processing lines where asbestos-containing products are present, but who do not directly handle bulk asbestos or fabricate asbestos mixtures, will be counted under Other Production Employees.

Fiber Introduction Operations are those operations where bulk (raw) asbestos is mixed with or added to a combination of other materials. Only Primary Processors will list employees in this category because Secondary Processors do not use bulk asbestos as a starting material.

Wet Mechanical Operations are those operations where asbestos fiber, asbestos mixtures, or asbestos-containing materials are fabricated, modified, or altered. In these operations, the asbestos component is wetted to reduce the release of airborne asbestos fiber. This category includes such activities as: machining, sawing, drilling, cutting, grinding, or pulverizing. All asbestos textile workers involved with wet operations will be counted here, whether involved in spinning, twisting, or weaving operations.

Dry Mechanical Operations are those operations where asbestos fiber, asbestos mixtures, or asbestos-containing materials are fabricated, modified, or altered without any intentional wetting of the material during the operation. This category includes activities such as: machining, sawing, drilling, cutting, grinding, or pulverizing. All asbestos textile workers in dry operations will be counted here, whether involved in spinning, twisting, or weaving operations.

Other Production Employees are those production employees involved with making an asbestos product in operations that require handling of asbestos fiber or materials in a manner not covered in the operations described in the other categories. This category will count workers who perform an operation that involves handling an asbestos mixture, such as bonding asbestos-felt-backing for vinyl sheet flooring or injecting asbestos-reinforced plastic into a mold. Other production workers who are to be counted in this category include (but are not limited to) those employees who take products off a production line, assemble parts, oversee drying or rolling operations, or inspect, weigh, or package asbestos mixtures or asbestos-containing products.

G(2). PRODUCTION EMPLOYEES

If you claim the number of employees to be confidential, mark (X) in the box at the right. ☐

______ (Product Line)	NUMBER OF PRODUCTION EMPLOYEES
Fiber Introduction Operations (includes blending, mixing, bag opening, willowing, etc.)	______
Wet Mechanical Operations (includes machining, sawing, drilling, cutting grinding, pulverizing, weaving, etc.)	______
Dry Mechanical Operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)	______
Other Production Employees	______

If you claim the number of employees to be confidential, mark (X) in the box at the right. ☐

______ (Product Line)	NUMBER OF PRODUCTION EMPLOYEES
Fiber Introduction Operations (includes blending, mixing, bag opening, willowing, etc.)	______
Wet Mechanical Operations (includes machining, sawing, drilling, cutting grinding, pulverizing, weaving, etc.)	______
Dry Mechanical Operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)	______
Other Production Employees	______

If you claim the number of employees to be confidential, mark (X) in the box at the right. ☐

______ (Product Line)	NUMBER OF PRODUCTION EMPLOYEES
Fiber Introduction Operations (includes blending, mixing, bag opening, willowing, etc.)	______
Wet Mechanical Operations (includes machining, sawing, drilling, cutting grinding, pulverizing, weaving, etc.)	______
Dry Mechanical Operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)	______
Other Production Employees	______

If you claim the number of employees to be confidential, mark (X) in the box at the right. ☐

______ (Product Line)	NUMBER OF PRODUCTION EMPLOYEES
Fiber Introduction Operations (includes blending, mixing, bag opening, willowing, etc.)	______
Wet Mechanical Operations (includes machining, sawing, drilling, cutting grinding, pulverizing, weaving, etc.)	______
Dry Mechanical Operations (includes machining, sawing, drilling, cutting, grinding, pulverizing, weaving, etc.)	______
Other Production Employees	______

H. SUMMARY OF CURRENT WORKER EXPOSURES

16. This section requires you to report the eight-hour Time Weighted Average (TWA) for all employees at the reporting site for whc determined a TWA. You should group all employees with known TWA's into the ranges of TWA values indicated on the following ch group of employees, you will then determine the total person hours that those employees worked at the given TWA range. Persor mill asbestos will report summaries of measurements pursuant to the requirements of the Mine Safety and Health Administration 55., 56., 57.5-1(a)). Persons who mill, process, or import asbestos will report summaries of measurements pursuant to the rec Occupational Safety and Health Administration (OSHA) (29 CFR 1910.1001). Do not estimate TWA figures for any employees. Repc values.

(H)1. 8-Hour Time Weighted Average (TWA)

For each range of exposure levels listed below:

Column 1 - enter the number of workers whose existing TWA falls within each exposure range. Where more than oe TW a particular worker in the most current year, use the geometric mean of these values as the TWA for the worker.

Column 2 - enter for each exposure range the total number of hours worked in 1980 by the employees listed in colur

Column 3 - enter the total number of actual measurements (filters) that you used to determine the employees' TWA's in this chart.

(H)2. Ceiling Concentration Levels

For each exposure level range:

Enter the number of workers for whom ceiling concentration levels of asbestos fiber were determined in 1980 pursu monitoring requirements of MSHA or OSHA.

Enter the number of ceiling concentration measurements that were recorded in 1980.

(H)1. 8-Hour Time Weighted Average (TWA)

Average 8-hour TWA (fibers/cc)	(1) Number of Workers Affected	(2) Total Person Hours Per Year at TWA in 1980	(3) Number of Measurements Used (filters)
0.1			
0.1-0.5			
0.6-1.0			
1.1-2.0			
2.0			

(H)2. Ceiling Concentration Levels

	Ceiling Concentration Levels (fibers/cc)		
	2.0-5.0	5.1-10.0	10.0
Number of Workers Affected			
Number of Measurements Recorded			

I. MEASURING ASBESTOS EMISSIONS OR FIBER RELEASE

Summarize and report separately the results of any measurements or monitoring that have been performed to determine the amount of asbestos fiber released during the production, use, or disposal of asbestos fiber or asbestos products (other than already reported in Part H of this form). Where possible, the measurements should characterize the type of fibers found and the fiber size distribution. Reports submitted in response to this section should describe the methodologies used to perform any tests, to gather samples, and to analyze samples. If this information has been previously submitted to a Federal agency you do not have to report again here, but you should indicate the date and to whom the information was sent, and briefly describe the nature of the information.

If you have applied for a water effluent discharge permit (NPDES Permit) or submitted a report to EPA in response to the National Emission Standard for Asbestos (NESHAP) (40 CFR §61.24) as a stationary point source, provide the following information:

NPDES Permit: Application Date: _____

Expiration Date: _____

NESHAP Report Date: _____

J. WASTE AND DISPOSAL

18. All entries in this form will account for the waste that is not recycled and disposal of that waste resulting from the production of each product line. The respondent may estimate the percentage of the total waste from the plant site that results from the production of each product line. The data reported for each product line will be separated on the form. For additional entries, attach additional copies of this form. If you cannot determine quantities by product line, then report total quantities disposed of for each form of waste.

SPECIFIC INSTRUCTIONS:

1. Product Line

Record each of the applicable product categories checked in Part A. If you cannot determine wastes by product line, then report according to the form of the waste (see below).

2. Form of Waste

Record the form of the waste either after completion of the processing or as it leaves the plant site. The form of the waste may be expressed using such terms as sludge, slurry, mixed dry particulate, or other appropriate terms. Report asbestos collected in control devices on a separate line.

3. Total Annual Quantity of Asbestos Waste (Short Tons)

Enter the total quantity, in short tons, of asbestos waste generated by each product line in 1980. Asbestos waste is a waste product that contains asbestos as some of the total waste. Do not report quantities of waste that you recycle or reprocess.

4. Average Percent Asbestos

Record an average percentage of asbestos weight in the total quantity of asbestos waste in short tons reported for the product category. This figure may be an estimate based on previous experience or an extrapolation of production mass balance figures.

5. Method of Transportation to Disposal Site

Record all methods by which the asbestos waste is transported to a disposal site and any precautions taken during shipment (e.g., gondola rail car, wetted wasted, covered).

6. Disposal Site(s) and Method of Disposal

Record the type of the disposal site(s) for the asbestos waste of each product category (e.g., municipal landfill, company owned landfill). Supply a brief description of the disposal method and process.

J. WASTE AND DISPOSAL

If you claim the information in any row confidential, mark (X) in the "confidential" column. All information listed in that row will be included in the claim.

Product #	(1) Product Line (WRITE IN PRODUCT NAME)	(2) Form of Waste (SLUDGE, SLURRY, PARTICULATE, OR SPECIFY OTHER)	(3) Total Annual Quantity of Asbestos Waste (SHORT TONS)	(4) Average Percent Asbestos	(5) Method of Transportation to Disposal Site	(6) Disposal Site(s) and Method of Disposal	Confidential
1				____%			
2				____%			
3				____%			
4				____%			
5				____%			
6				____%			

K. POLLUTION CONTROL EQUIPMENT

19. This section requires you to list all pieces of pollution control equipment employed at your plant site to control or remove airborne asbestos fiber. You are to provide certain identifying and technical data, and then estimate the quantity of asbestos fiber that is released (or not captured) by each reported piece of equipment. If portions of the required data have been previously reported to EPA, and the data is still current, then write "EPA" in place of that data, and reference the address where the data was sent and the date it was sent.

List each piece of equipment on a separate line. For additional entries attach additional copies of the form.

Code - Do Not complete this portion. This is for EPA use only.

1. Type of Equipment

List all pollution control equipment used at the plant site which remove asbestos fiber from the air. The type of equipment should be a generic name which indicates a family of pollution control equipment, such as a baghouse, a wet scrubber, a dry scrubber, or a cyclone.

2. Brand

List the actual equipment at the reporting site for each generic type of pollution control equipment. Record the name of the manufacturer, the brand name, and the model number.

3. Date Installed

Record the month and year in which each piece of equipment was installed.

4. Operating Schedule

Under Actual Hrs./Yr., record the number of hours each piece of equipment actually operated in 1979. In addition, under Normal Hrs./Yr., record the average number of hours that each piece of equipment would normally operate by averaging the actual operating hours for 1976-1980.

5. Quantity Collected Annually (POUNDS)

For each piece of pollution control equipment, enter the quantity in pounds that was collected in 1980.

6. Percent Collection Efficiency

Record the Designed percent collection efficiency by weight (the percent of flow-through weight expected to be captured) that is claimed by the manufacturer for each piece of equipment. Additionally, under Actual, record the percent of collection efficiency that has been attained during the operation of the equipment. (If unknown, estimate or record the figure entered as the Designed percent collection efficiency.)

7. Tests on Equipment

Briefly describe the method(s) employed for testing the collection efficiency of reported equipment and most recent date of the test(s).

8. Estimate Quantity Released Annually (POUNDS)

Record an estimate, in pounds, of the asbestos fibers that are released (not trapped) annually by each piece of pollution control equipment. The figure for each piece of equipment can be determined by dividing the Quantity Collected Annually by the Actual Percent Collection Efficiency, and then subtracting the Quantity Collected Annually from that figure. The Total Pass-Through equals the sum of the Quantity Collected Annually and the Quantity Released Annually.

Compute for each piece of equipment:

$$\frac{\text{Quantity Collected Annually X (100 Percent)}}{\text{Actual Percent Collection Efficiency}} = \text{Total Pass-Through}$$

then

Total Pass-Through minus Quantity Collected Annually = Quantity Released Annually (for each piece of equipment)

K. POLLUTION CONTROL EQUIPMENT

If you claim the information in any row confidential, mark (X) in the "confidential column. All information listed in that row will be included in the claim.

Equipment #	Code (EPA USE ONLY)	(1) Type of Equipment	(2) Brand (MFR., BRAND NAME, & MODEL #)	(3) Date Installed	(4) Operating Schedule Actual Hrs./Yr.	(4) Operating Schedule Normal Hrs./Yr.	(5) Quantity Collected Annually (POUNDS)	(6) Percent Collection Efficiency Designed (%)	(6) Percent Collection Efficiency Actual (%)	(7) Tests on Equipment (METHOD)	(7) Tests on Equipment (DATE)	(8) Estimate Quantity Released Annually (POUNDS)	Confidential
1			(MFR.) (BRAND NAME) (MODEL #)	(MO./YR.)			(POUNDS)	%	%		(MO/YR)	(POUNDS)	
2			(MFR.) (BRAND NAME) (MODEL #)	(MO./YR.)			(POUNDS)	%	%		(MO/YR)	(POUNDS)	
3			(MFR.) (BRAND NAME) (MODEL #)	(MO./YR.)			(POUNDS)	%	%		(MO/YR)	(POUNDS)	
4			(MFR.) (BRAND NAME) (MODEL #)	(MO./YR.)			(POUNDS)	%	%		(MO/YR)	(POUNDS)	
5			(MFR.) (BRAND NAME) (MODEL #)	(MO./YR.)			(POUNDS)	%	%		(MO/YR)	(POUNDS)	

BILLING CODE 6560-31-C

§ 763.77 Reporting secondary processing and importation of asbestos mixtures.

The following EPA Form 7710–37, Reporting Secondary Processing and Importation of Asbestos Mixtures, will be completed and submitted to EPA as required in §§ 763.65 and 763.71. Information must be reported on this form to the extent that it is in the possession of the respondent.

(a) EPA Form 7710–37 (8–80)

BILLING CODE 6560-31-M

EPA

REPORTING SECONDARY PROCESSING AND IMPORTATION OF ASBESTOS MIXTURES

INSTRUCTIONS

Form Approved OMB No. 158-R00XX

The purpose of this survey is to identify the manufactured or imported products which contain asbestos. See "Reporting commercial and Industrial Uses of Asbestos", 40 CFR Part 763.

WHO MUST COMPLETE THIS FORM

1. Those who are secondary processors of asbestos must complete Parts I and II of this form. Each plant site or manufacturing facility must be reported separately.

2. Those who are importers of asbestos mixtures or article(s) containing asbestos component(s) must complete Parts I and III of this form.

DEFINITIONS

1. Asbestos Mixture — means a mixture or material to which bulk asbestos or another asbestos mixture is intentionally added. An asbestos mixture can be utilized as a finished product or incorporated into other products. Some examples of asbestos mixtures are: A/C pipe; asbestos textiles; asbestos friction material; and asbestos paper. For importers, asbestos mixtures include merchandise declared to the U.S. Customs Service within the numbers 518.2-518.5 of the Tariff Schedule of the United States, Annotated (TSUSA), as well as other pertinent TSUSA numbers.

2. Asbestos Component — means any asbestos mixture, including any finished product containing an asbestos mixture which is incorporated into an article. Some examples of asbestos components are: brake shoes in an automobile; an asbestos-reinforced plastic television cabinet; asbestos paper insulation in an appliance, garments made in whole or in part of asbestos textile(s).

3. Importer of Asbestos Mixtures or Articles Containing Asbestos Component(s) — means a person who imports merchandise which contains asbestos into the customs territory of the U.S. Persons who import bulk asbestos should not complete this report, but should complete EPA Form 7710-36.

4. Secondary Processor of Asbestos — means a person who incorporates an asbestos mixture into his product as a starting material by fabricating, modifying, or reformulating the asbestos starting material.

PART I COMPANY INFORMATION

Enter the name, address and phone number of your company. Enter the name of the principal technical contact who is either responsible for the completion of this form, or has sufficient knowledge of its content to respond to questions posed by EPA. Enter the unique Dun and Bradstreet number that is designated for the plant site or address reported here. Finally, if you import the merchandise reported here, check the appropriate box to indicate that you are either the Principal importer or the Agent for the Principal. Where there are two "importers" for the same shipment, the Principal rather than the Agent should report.

PART II SECONDARY PROCESSOR END PRODUCTS

This portion of the form must be completed by those who are secondary processors of asbestos mixtures. Secondary processors who also produce or import bulk asbestos or who also are primary processors will not complete this form, but should complete EPA Form 7710-36. Secondary processors who also import asbestos mixtures or articles containing asbestos components must complete Part III of this form. If additional space is needed, you should use additional copies of this form.

End Product(s) — Listed in Section I are some typical terms for products made with asbestos mixtures, and represent some of the products made by Secondary Processors of asbestos. This list is only illustrative, and you should write in the name of your product if it is not listed. In the column under "End Product(s)", enter the code number, or write in the name, of all end products you make in which you incorporate an asbestos mixture(s). For example, if you make a wood stove that contains an asbestos mixture, enter "107"; if you make a toaster that contains an asbestos mixture, enter the code for an appliance and write in "toaster" next to that code in the following manner - "05, toaster".

> [If you process bulk asbestos fiber to make any of your products at this plant site, then you are a PRIMARY PROCESSOR. You should complete EPA Form 7710-36 if you are a Primary Processor.]

Asbestos Mixture(s) — Listed in Section 2 are typical terms for asbestos mixtures *(materials that contain asbestos)*. Under the column "Asbestos Mixture", and opposite the appropriate end product, write in the code number or the name of the asbestos mixture(s) that you incorporate in each end product. For example, if you incorporate asbestos millboard into wood stoves and toasters, your entries would be as follows:

End Product	Asbestos Mixture
107	03
05, toaster	03

Quantity of Asbestos Mixture Consumed – Opposite each Asbestos Mixture that is listed, enter the quantity of each asbestos mixture that you consumed in 1980. Specify the quantity according to the unit of measure listed in Section 2 for each asbestos mixture. If the listed unit of measure is not applicable or is not known, report the quantity in short tons. If your records do not permit you to list the quantities consumed for separate end products, then report the total amount of each type of asbestos mixture that you consumed in 1980.

PART III IMPORTERS OF ASBESTOS MIXTURE(S) OR ARTICLE(S) CONTAINING AN ASBESTOS COMPONENT(S)

This part of the form must be completed by those who import an asbestos mixture or an article containing an asbestos component(s). If you import an article that contains an asbestos component, opposite the code number or name of the product, write a brief description of the asbestos component(s). Do Not report the importation of bulk asbestos here, because if you import bulk asbestos (TSUSA Number 518.11), you must complete EPA Form 7710-36. Space is provided for up to four products. Should additional space be required, additional copies of the form should be used.

Asbestos Mixture or Article – Listed in the instructions to this form are typical terms for products which contain asbestos. Locate the name that best describes the product(s) you import, and enter the code(s). If you import a product which is not listed, but you know that the product contains asbestos, write in the name of the product. If the article has a trade name(s), list the trade name(s) next to the generic name of the product.

Quantity of Asbestos Mixture(s) or Article(s) Imported – Record the total annual quantity imported in 1980. List these products and specify the quantity according to the unit of measure listed in Section 2. If the listed unit of measure is not applicable or is not known, report the quantity according to the unit of measure as reported to the U.S. Customs Service upon entry of the merchandise into the United States.

Description of Components in Article – List all asbestos components which are contained in the imported articles by entering the name of the asbestos component or describing the type of asbestos materials in the component opposite the name of the Product *(see definitions above)*. For example, an imported car would be listed as an "Article", and either "brake shoes" or "asbestos-containing friction materials" would be listed as the "Asbestos Component". If you import an asbestos mixture, you do not have to complete this description.

SECTION 1 - TYPICAL TERMS FOR PRODUCTS MADE FROM ASBESTOS MIXTURES

01. Aerial distress flares
02. Acoustical products
03. Aluminized cloth
04. Ammunition wadding
05. Appliance *(specify Appliance)*
06. Aprons
07. Arc deflectors
08. Rope/tape/braiding
09. Yarn/lap
10. Wick
11. Ash trays
12. Asphaltic coatings
13. Automotive/truck body coatings
14. Automotive gaskets
15. Bags
16. Baking sheets
17. Belting
18. Blackboards
19. Blankets
20. Boiler and furnace baffles
21. Boots
22. Brake linings, molded *(light vehicle)*
23. Brake linings, molded *(heavy equip.)*
24. Brake linings, woven *(light vehicle)*
25. Brake linings, woven *(heavy equip.)*
26. Buffing and polishing compounds
27. Cable insulation
28. Candlesticks
29. Carpet padding
30. Caulking/patching compounds
31. Caulks, marine
32. Chemical tanks and vessels
33. Cigarette lighter wicks
34. Clothing *(other)*
35. Clutch facings, molded
36. Clutch facings, woven
37. Commercial/industrial dryer felts
38. Compressed sheet gaskets
39. Custom automotive body filler
40. Decorated building panels
41. Disc brake pads
42. Draperies
43. Drilling fluid
44. Drip cloths for molten ceramics/metals
45. Electronic motor components
46. Electrical resistance supports
47. Electrical switchboards
48. Electrical switch supports
49. Electrical wire insulation
50. Filters
51. Fire doors
52. Fire hoses
53. Fireproof absorbant paper
54. Flashing cement
55. Flat sheets
56. Flexible air conductor
57. Flooring, asbestos felt-based, sheet or tile
58. Furnace cement
59. Gaskets
60. Gaskets, metal reinforced
61. Glazing compounds
62. Gloves
63. Grommets
64. Gun grips
65. Hats and helmets
66. Heater element supports
67. Heat resistant mats, table pads
68. Heat shields
69. Hoods, vents
70. Injection molded plastics
71. Insulation, other *(specify)*
72. Ironing board pads and insulation
73. Iron rests
74. Jewelry making equipment
75. Kilns
76. Laboratory equipment
77. Lamp sockets
78. Linings for vaults, safes, humidifiers, and filing cabinets
79. Liners, pond and canal
80. Mantles, lamp or catalytic heater
81. Marine bulkheads
82. Mittens
83. Molded asbestos reinforced plastics
84. Molten metal handling equipment
85. Motor armature
86. Mufflers
87. Oven and stove insulation
88. Overgaiters
89. Packing
90. Packing components
91. Paints, textured
92. Phonograph records
93. Piano and organ felts
94. Pipe wrap
95. Plaster and stucco
96. Portable construction building
97. Pottery clay
98. Radiator top insulation
99. Radiator sealant
100. Pump and valve seals
101. Roof coatings
102. Roofing, saturated
103. Roofing, unsaturated
104. Roof shingles
105. Rugs
106. Sleeves
107. Stove lining, coal or wood
108. Stove pipe rings
109. Suits
110. Switchboards and components
111. Tape
112. Theater curtains or draperies
113. Thermal insulation
114. Tile cement
115. Transmissions and components
116. Umbrellas
117. Valve, flange, tank sealing components
118. Vinyl asbestos floor tile
119. Wallboard
120. Wall/roofing panels
121. Welding rod coatings
122. Other *(specify)*

SECTION 2 - TYPICAL TERMS FOR PRODUCTS MADE FROM BULK ASBESTOS

	SUGGESTED UNITS OF MEASURE
PAPERS, FELTS, OR RELATED PRODUCTS	
01. commercial paper	short tons
02. rollboard	short tons
03. millboard	short tons
04. pipeline wrap	short tons
05. beater-add gasketing paper	short tons
06. high-grade electrical paper	short tons
07. unsaturated roofing felt	short tons
08. saturated roofing felt	short tons
09. speciality paper or felt	short tons
10. saturated paper or felt	short tons
11. corrugated paper	short tons
FLOOR COVERINGS	
12. vinyl-asbestos floor tile	square yards
13. asbestos-felt-backed vinyl flooring	square yards
ASBESTOS-CEMENT PRODUCTS	
14. A/C Pipe	short tons
15. A/C Pipe, fittings	short tons
16. A/C Sheet, flat	hundred square feet
17. A/C Sheet, corrugated	hundred square feet
18. A/C Shingle	squares
19. A/C Siding	squares
FRICTION MATERIALS	
20. Brake linings, molded *(light vehicle)*	cubic feet
21. Brake linings, molded *(heavy equipment)*	cubic feet
22. Brake linings, woven *(light vehicle)*	linear feet
23. Brake linings, woven *(heavy equipment)*	linear feet
24. Disc brake pads *(light vehicles)*	pieces
25. Disc brake pads or blocks *(heavy equip.)*	pieces
26. Clutch plate facing, woven	pieces
26. Clutch plate facing, molded	pieces
28. Transmission components *(automotive)*	pieces
29. Friction materials for industrial, commercial and consumer machinery	cubic feet
TEXTILES	
30. cloth	pounds
31. thread, yarn, roving, cord, rope or wick	pounds
32. lap	pounds
OTHER PRODUCTS	
33. Sheet Gasketing *(other than beater-add paper)*	square yards
34. Molded packing or gasketing	pounds
35. Paints and Surface Coating	gallons
36. Resins, Adhesives and Sealants	gallons
37. Asphaltic compounds	gallons
38. Asbestos reinforced plastics	pounds
39. Insulation materials not elsewhere classified *(n.e.c.)*	———
40. Mixed or repackaged asbestos fiber	short tons
41. Other, n.e.c. *(specify)*	———

DRAFT

Form Approved OMB No. 158-R00XX

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

REPORTING SECONDARY PROCESSING AND IMPORTATION OF ASBESTOS MIXTURES

PART I COMPANY INFORMATION

COMPANY NAME	TECHNICAL CONTACT

ADDRESS *(Street, City, State, & ZIP Code)*

TELEPHONE	DUN & BRADSTREET NUMBER	IMPORTER
		☐ PRINCIPAL ☐ AGENT

PART II SECONDARY PROCESSOR END PRODUCT(S)

From the list in Section I, enter the asbestos end product produced. Opposite each product, list the asbestos mixture that you process, and the quantity of each mixture that you consumed in 1980.

END PRODUCT(S)	ASBESTOS MIXTURE(S)	QUANTITY OF ASBESTOS MIXTURE CONSUMED

PART III IMPORTERS OF ASBESTOS MIXTURE(S) OR ARTICLE(S) CONTAINING ASBESTOS COMPONENTS

List the asbestos mixture(s) or article(s) that you import and the quantity of each item that you imported in 1980. Opposite each item, enter a description of the asbestos component in the mixture or article.

ASBESTOS MIXTURE(S) OR ARTICLES	QUANTITY OF ASBESTOS MIXTURE(S) OR ARTICLE(S) IMPORTED	DESCRIPTION OF ASBESTOS COMPONENT(S) IN ARTICLE

CERTIFICATION AND INSTRUCTIONS FOR ASSERTING AND SUBSTANTIATING CLAIMS OF CONFIDENTIALITY

To assert a claim of confidentiality for information reported on this form, you must clearly circle with a red marker the information you claim to be confidential. Any information you do not claim as confidential will be included in the public record, without further notice to you.

If you assert a claim of confidentiality and you substantiate that claim, EPA will disclose the information only as provided in the Agency's confidentiality regulations which appear in 40 CFR, Part 2, as amended on September 8, 1978 (43 FR 39997), and March 23, 1979 (44 FR 17673). Those regulations include provisions stating that, with specific exceptions, EPA will maintain the confidentiality of information claimed as confidential until the EPA Office of General Counsel makes a final determination that certain information is not entitled to confidential treatment. If confidentiality is denied, the submitter will receive written notice 30 days before the date that EPA will make the information available to the public.

In addition to asserting claims of confidentiality, you must substantiate these claims. To do this, the person who signs the form must certify the truth and accuracy of the following four statements which apply to all information claimed as confidential. (Note: The certification is only to be signed once for the form.)

1. My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures.

2. The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding) without my company's consent.

3. The information is not publicly available elsewhere.

4. Disclosure of the information claimed as confidential would cause substantial harm to my company's competitive position.

Signature of Authorized Official Date

BILLING CODE 6560-31-C

§ 763.78 Sunset provision.

All requirements of this rule will terminate five years after promulgation of this rule.

[FR Doc. 81-2457 Filed 1-23-81; 8:45 am]
BILLING CODE 6560-31-M

Federal Register

Monday
January 26, 1981

Part IV

Department of Energy

Office of Conservation and Solar Energy

Emergency Energy Conservation

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 477

[CAS-RM-80-513]

Emergency Energy Conservation

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Section 212 of the Emergency Energy Conservation Act of 1979 (Pub. L. No. 96-102, 42 U.S.C. 8501 *et seq.*) encourages each State to submit to the Secretary of Energy a State emergency energy conservation plan as soon as possible after enactment of the Act (November 5, 1979). These plans are required to be designed to offset the impact of an energy supply interruption by providing for emergency reductions in the public and private use of an energy source for which the President has established an emergency conservation target.

By this notice, the Department of Energy proposes to establish the procedures and requirements for administering its grant program to assist States as they develop emergency energy conservation plans. This proposed rule contains a formula for allocating funds among the States.

DATE: Written comments must be received by February 25, 1981, 4:30 p.m., e.s.t., in order to insure their consideration. A public hearing will be held on February 11, 1981, in Washington, D.C., at the place and time indicated in Section III of the Supplemental Information. Requests to speak at the public hearing must be received by January 30, 1981. DOE will notify persons selected to appear by February 4, 1981.

ADDRESS: All written comments and requests to speak should be addressed to: Ms. Kay Loomis, Hearings and Dockets Branch, Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attn: CAS-RM-80-513. Telephone: (202) 252-9319. Public hearing location: Room 2105, 2000 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

W. Lorn Harvey or George H. Kerestes, Office of Emergency Conservation Programs, Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue, S.W., Room GE-004A, Washington, D.C. 20585, Telephone: (202) 252-4966.

Christopher T. Smith, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B144, Mail Stop 6F094, Washington, D.C. 20585, Telephone: (202) 252-9510.

Emergency Conservation Service Hotline:

(800) 424-9122, from the Continental United States;

(800) 424-9088, from Alaska, Hawaii, Puerto Rico, and the Virgin Islands; 252-4950, from metropolitan Washington, D.C.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Emergency Energy Conservation Act of 1979 (Pub. L. No. 96-102, 42 U.S.C. 8501 *et seq.*) (EECA or the Act) provides the framework for a coordinated national response to a severe energy supply interruption. If the President finds that such an interruption exists or is imminent, or that actions to restrain domestic energy demand are necessary under the international energy program, he may establish monthly emergency energy conservation targets for each affected energy source (e.g., gasoline or home heating oil) for the Nation and each State. These targets will be designed to reduce consumption and thereby protect interstate commerce, and to alleviate disruptions in gasoline, diesel, and other fuel markets.

Within 45 days after these targets are established, Governors must submit to the Department of Energy (DOE) State emergency energy conservation plans containing measures they will implement to reduce consumption of each targeted energy source to a level no greater than that set by the President.

As required by section 212 of EECA, the plans are to be designed to meet or exceed the emergency conservation targets which the President may make effective for each State. To achieve its target, a State's plan should provide for emergency reduction in the public and private use of the targeted energy source. The Act specifies that a State plan may provide for reduced use of that energy source through voluntary programs, measures which are authorized by State law, or measures for which the Governor has received a delegation of Federal authority under section 212(d) of the Act.

For the first round of State plans, States should focus primarly on measures which will conserve gasoline because: (1) the Standby Federal Plan emphasizes emergency gasoline conservation; (2) the current target-setting methodologies and consumption monitoring systems cover only gasoline; (3) the greatest potential for transportation fuel savings is to reduce gasoline consumed by passenger authomobiles, and (4) gasoline now accounts for roughly 40 percent of crude oil consumption from foreign and domestic sources.

The Act encourages States to submit their plans to DOE for tentative approval prior to the onset of an emergency. Moreover, States should begin or expedite the emergency planning process now in order to avoid having to develop such plans during the very limited 45-day period allowed by the Act. The DOE Regional Representatives, who head DOE's 10 Regional Offices, have initiated a program of consultation with States aimed at establishing an ongoing emergency planning process. This continuing planning process, with the States and DOE mutually participating, is the most useful approach to establishing and maintaining an adequate level of preparedness for future energy emergencies. The DOE Regional Representative will be responsible for receipt, review, and approval of all grant applications under EECA, Title II.

The EECA grant program began on November 7, 1980, when DOE distributed a program solicitation to the 57 jurisdictions which are eligible to apply for grants to initiate or stimulate emergency conservation planning activities. These jurisdictions, which include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, are the only potential applicants eligible for this funding and are hereinafter refered to as the States. This action was announed in the Federal Register on November 20, 1980 (45 FR 76785), and represents Phase I of the EECA grant program. Phase I makes available a total of approximately $1.6 million, up to $29,000 per State, so that each State can begin or increase its effort to develop an emergency energy conservation plan. Funds which were not awarded to eligible States under Phase I (which will end upon the date of

publication in the Federal Register of a final rulemaking for this grant program) will be apportioned to Phase II and allocated by formula to all the eligible States. Not counting any Phase I carryover, it is anticipated that up to approximately $6.3 million will be available for Phase I allocation.

The information developed in Phase I will serve as the basis for an application for FY 1981 Phase II grants, which are the subject of this rulemaking.

In addition to grants, the proposed rules would authorize the Regional Representative to provide information and technical assistance to the States. Such assistance, which would be subject to the availability of DOE personnel and funds, would have to be requested by the State.

On October 28, 1980 (45 FR 71498), DOE published its proposed procedures (for fiscal year 1932) to coordinate energy conservation programs conducted by the States through a consolidated process by which States apply to DOE for financial assistance for these programs. The Emergency Energy Conservation Act was included in this proposed rule. However, since the Consolidated State Grant Program would not be effective before fiscal year 1982, it was necessary to proceed with today's proposal to establish the procedures and requirements for the EECA grant program in fiscal year 1981. A final decision regarding whether the EECA program will be included in the Consolidated State Grant Program has not been made.

II. The Proposed Rule

This rule proposes a new subpart G to 10 CFR Part 477. This subpart establishes a grant program that will enable States to receive Federal funds for EECA planning activities. On February 7, 1980, Subparts A through F of Part 477 were published as an interim final rule, although some provisions were published as proposed rather than interim final (45 FR 8462). These subparts concern both State emergency conservation plans and the Standby Federal Energy Conservation Plan, which is required by section 213 of EECA. These subparts are entitled—

A. General

B. Submission, Contents, and Approval of State Plans

C. Standby Federal Emergency Energy Conservation Plan (General)

D. Administrative Procedures

E. Motor Fuel Conservation Measures

F. Middle Distillates Conservation Measures.

Proposed § 477.70 sets forth the purpose and scope of Subpart G. The purpose is to provide grants to States for developing emergency energy conservation plans. The scope of he subpart is to establish procedures for the award and administration of DOE grants to States for the development and modification of State emergency energy conservation plans under Title II of EECA.

Proposed § 477.71 defines the terms "Application" and "Regional Representative." Other terms which pertain to this subpart are defined in § 477.2 of this part.

Proposed § 477.72 establishes the eligibility requirements for this grant program. Jurisdictions subject to EECA—the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands—may apply for grants under this program.

Proposed § 477.73 prescribes the formula for allocating funds among the States for EECA planning activities. The allocation formula is intended to provide each State an amount of Federal funds that provide resources for effective EECA planning activities.

In FY 1981, DOE proposes to allocate the available funds according to the following formula: 82.0 percent of available funds would be allocated equally among each of the 50 States, Puerto Rico, and the District of Columbia; 4.0 percent of available funds would be allocated among each of the U.S. territories and possessions, and 14 percent of available funds would be divided among the eligible States on the basis of population. Coupled with the $29,000 available to each State under the November 7, 1980, program solicitation, the proposed formula should make available a threshold amount which will enable each State to initiate development of its EECA Plan. It represents DOE's best estimate of how the funds should be distributed to ensure that each State is capable of establishing and maintaining an emergency conservation planning capability.

DOE is very interested in receiving comments relating to the effects this proposed formula will have in the development of State emergency conservation plans. Although DOE has not proposed a funding formula for FY 1982 and subsequent years, comments regarding how funds should be allocated in future years would be helpful and appreciated.

Proposed § 477.74 establishes the contents of an application for an EECA planning and development grant. In general, the application for support under this program must be submitted by the Governor, a State office designated by the Governor or a State office authorized to submit grant applications. The Federal Assistance Application for Non-Construction Programs, including the Face Sheet, Project Approval Information, Budget Information, Program Narrative, and Assurances, in addition to DOE's Nondiscrimination in Federally Assisted Programs, shall be used. The Budget information form is very useful to DOE's management of this program and evaluation of an application because it will indicate a State's need for funds, alternative sources of funds, and projected costs. This section provides that as part of the information required for the Program Narrative, the applicant should discuss the management and organization for planning process, actions relating to the consultation with representatives of affected business and local governments, various planning tasks, steps to be taken with regard to Part III of OMB Circular A-95, and past planning activities.

As part of the coordination and consultation process proposed in § 477.74(e)(4), the States might consider: (1) task assignments to other institutions; (2) open sessions with the public (workshops, seminars, public meetings); (3) creation of an advisory committee (or use of an existing advisory committee); (4) creation of task forces to work on specific portions of the plan; (5) frequent *ad hoc* consultation, either in-person, by phone or in writing; and (6) speeches to, and discussions with, other organizations at their meetings.

Proposed § 477.75 specifies deadlines for grant applications. For fiscal year 1981, applications must be submitted within 60 days after the effective date of this rule. In addition, provision is made for a State to request a 30-day extension of this deadline.

Proposed § 477.76 sets forth the procedure for the review and approval of applications for EECA funding. The Regional Representative shall review each application and shall determine whether the application meets the requirements of this subpart and, if so, a grant award shall be made. If an application is found to be unacceptable, the State will receive a written statement explaining why its application was not acceptable and an opportunity to amend its application for reconsideration by DOE. This proposed section also provides that the disapproval of an amended application can be appealed in accordance with DOE's Procedures for Financial Assistance Appeals.

Proposed § 477.78 states that the award and administration of EECA planning grants shall be governed by the DOE Assistance Regulations, 10 CFR Part 600, to the extent not governed by this rule, and specifies that disputes about a grant application or administration may be appealed in accordance with 10 CFR Part 1024, Procedures for Financial Assistance Appeals.

Proposed § 477.79 discusses the reporting requirements which apply to this grant program.

Proposed § 477.80 specifies the costs which are unallowable under this grant.

DOE is not requiring the States, as a condition of grants issued under this subpart, to provide matching funds from non-Federal sources. However, as part of the application, the grantee should indicate the resources devoted to EECA planning.

III. Opportunity for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposal set forth in this notice to Ms. Kay Loomis, Hearings and Dockets Branch, Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attn: CAS–RM–80–513.

Comments should be identified on the outside of the envelope and on documents with the designation "Emergency Energy Conservation," Attn: CAS–RM–80–513. Fifteen copies should be submitted. All comments received by February 25, 1981, before 4:30 p.m., e.s.t., and all other relevant information, will be considered by DOE before final action is taken regarding the proposed guidelines. All comments received will be available for public inspection in the DOE Reading Room, 1E 190, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

A comment period of 30 days is provided in today's proposal. The acting under secretary has waived the requirement for a 60-day comment period which Executive Order 12044 specifies for significant regulations because it is in the public interest to stimulate State emergency planning efforts by providing these grants to States at the earliest date practicable.

Pursuant to the provisions of 10 CFR Section 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. DOE shall make its own determination with regard to any claim that information submitted be withheld from public disclosure.

B. Public Hearing

DOE will hold one public hearing on this proposed rule. The public hearing will be held in Washington, D.C., at 9:30 a.m., local time, on February 11, 1981 at the Department of Energy, Room 2105, 2000 M Street N.W., Washington, D.C.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. Requests to speak at the hearing should be addressed to Ms. Kay Loomis, Hearings and Dockets, Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attn: CAS–RM–80–513, (202) 252–9319, and must be received by 4:30 p.m., e.s.t. on January 30, 1981. A request may also be hand delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments with the additional notation "With Request To Speak."

The person making the request shall: describe briefly his or her interest in the proceeding; if appropriate, state why that person is a proper representative of a group or class of persons that has such an interest; give a concise summary of the proposed oral presentation; and provide a phone number where the person may be contacted during the day.

Each person selected to be heard at the public hearing to be held in Washington, D.C., will be notified by February 4, 1981. Those persons selected to be heard should bring 15 copies of their statement to the hearing. If a person cannot provide 15 copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak.

C. Conduct of Hearing

DOE reserves the right to select persons to speak at the hearing, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at this hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all the information available to DOE.

Any participant who wishes to ask questions at the hearing may submit the questions, in writing, at the registration desk. The presiding officer will determine whether the questions are relevant and material, and whether the time limitations permit them to be answered.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Reading Room, 1E 190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any person may purchase a copy of the transcript from the reporter. If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Notice of cancellation will also be given to all persons scheduled to speak at the hearing.

IV. Other Matters

A. Notice of Information Requirements for Program Announcements

Consistent with the "Notice of Information Requirements for Program Announcements," issued by the Office of Management and Budget (OMB) on May 27, 1980, 45 FR 35954 (May 28, 1980), the following information is provided. The official program number and title as outlined by OMB Circular A–89, "Catalog of Federal Domestic Assistance," for the EECA program is 81.071. The program title is Emergency Energy Conservation Act Plans.

As required by proposed 477.74(e)(6), DOE also states that OMB Circular A–95, Part III, applies to this grant program. Part III requires that a State Governor be afforded 45 days to comment on how a State plan relates to other State actions, and urges the Governor to involve areawide clearinghouses in reviewing a State plan. This program is not subject to Part I review.

B. Environmental Review

The proposed EECA grant program regulation has been reviewed in accordance with DOE's responsibilities

under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The regulation will provide the procedures which a State must follow to apply for a grant for developing an emergency energy conservation plan in accordance with Title II of EECA. Because it is administrative, this proposed regulation does not constitute a major Federal action significantly affecting the environment within the meaning of NEPA and an environmental impact statement is not required. Pursuant to the requirements of NEPA, at the time the Standby Federal Emergency Energy Conservation Plan was published (45 FR 8462 (February 7, 1980)), the environmental impacts of each of the measures included in the Standby Federal Plan were reviewed, and it was determined that none of those measures would have any significant impact upon the environment. Under proposed section 477.74 a State would be required to submit, as part of its grant application, information regarding the environmental effects of any measures in the State plan which were not included in the Standby Federal Plan. The impacts of alternative measures which States may elect to substitute for the conservation measures in the Federal plan will be evaluated by DOE using the environmental information submitted by each State with its individual plan.

C. Regulatory Analysis

The proposed EECA grant program has been reviewed in accordance with DOE Order 2030, which implements Executive Order 12044 (43 FR 12661, March 24, 1978). Under the procedures in these orders, DOE has determined that the proposed rulemaking is "significant" but will not have a "major" impact and therefore does not require a regulatory analysis.

D. Urban Impact Analysis

This proposed regulation has been reviewed in accordance with OMB Circular A-116 to assess the impact on urban centers and communities. In accordance with the DOE finding that the regulation is not likely to have a major impact, DOE has determined that no urban impact analysis of the rulemaking is necessary, pursuant to Section 3(a) of OMB Circular A-116.

E. Regulatory Flexibility Act Analysis

Since this proposed regulation involves only grants to State governments, it will not have a significant economic impact on a substantial number of small entities, and therefore, an analysis is not required under the Regulatory Flexibility Act (Pub. L. 96-354).

F. New Title for Part 477

DOE proposed to change the title of Part 477 from "Standby Federal Emergency Energy Conservation Plan" to "Emergency Energy Conservation." This change is necessary because Part 477 will include several subparts, like the one proposed today, which do not relate directly to the Standby Federal Plan but which do relate to planning activities under EECA.

In consideration of the foregoing, Part 477 of Title 10, Code of Federal Regulations, is proposed to be amended by changing its title from "Standby Federal Emergency Energy Conservation Plan" to "Emergency Energy Conservation", and by establishing a new subpart G as set forth below.

Issued in Washington, D.C. January 19, 1981.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

PART 477—EMERGENCY ENERGY CONSERVATION

* * * * *

Subpart G—Grants

Authority: Title II of the Emergency Energy Conservation Act of 1979, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Department of the Interior and Related Agencies Appropriation Act, 1981, Pub. L. No. 96-514; and Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 *et seq.*

Subpart G—Grants

§ 477.70 Purpose and scope.

(a) The purpose of this subpart is to promote the Nation's readiness and capability to withstand a severe energy supply interruption through development of State emergency energy conservation plans, and through the provision of Federal grants and technical assistance to States in support of such State emergency energy conservation planning.

(b) This subpart establishes procedures for the award and administration of grants to States for the development and modification of State emergency energy conservation plans under the Act. A grant awarded under this program may be used to assist a State in developing and modifying an emergency conservation plan for an energy source or sources which may be affected by a severe energy supply interruption and for which the President may establish, or has established, an emergency conservation target or targets under Section 211 of the Act.

§ 477.71 Definitions.

Definitions in § 477.2 of this part are applicable to this subpart unless otherwise provided in this subpart. For the purpose of this subpart—

"Application" means the written information, required by § 477.74, to be submitted by a State or maintained on file with DOE, which is used to request a grant in accordance with this subpart.

"Regional Representative" means the Regional Representative of the Secretary.

§ 477.72 Eligibility requirements.

Any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, are eligible to apply for grants under this subpart.

§ 477.73 Allocation formula.

(a) For fiscal year 1981, funds shall be allocated among the States, to the extent of funds available, in accordance with the following formula—

(1) 82.0 percent will be allocated equally among each of the 50 States, the District of Columbia, and Puerto Rico; and

(2) 4.0 percent will be allocated equally among the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands; and

(3) 14 percent will be divided among the eligible States on the basis of each State's population as reported by the Department of Commerce, Bureau of Census, in the most recent publication of "Current Population Reports."

(b) Within 30 days after funds are made available to DOE for grants under this subpart, the Regional Representative shall provide written notification to each State in his/her Region of the allocation for which the State may apply.

(c) After 120 days following the deadline for applications, DOE will reallocate funds that have not been obligated by DOE to States in accordance with the formula contained in section 477.73(a).

§ 477.74 State application.

(a) A Governor, a State office designated by the Governor, or any State agency specifically authorized to do so under State law may submit an application for a grant under this subpart.

(b) The applicant shall submit an original and two (2) copies of the application to the appropriate DOE Regional Representative except as provided otherwise in this subpart.

(c) The application must contain the information described in subsections (d) and (e) of this section and must also include a copy of any emergency energy conservation planning documents already developed and not already on file with DOE. A State may also include any other information it may need for its own planning purposes.

(d) The Face Sheet (Standard Form 424) Project Approval Information, Budget Information, Program Narrative, and Assurances in addition to DOE's Nondiscrimination in Federally Assisted Programs, as contained in the Federal Assistance Application for Non-Construction Programs, Attachment M of OMB Circular A-102, shall be used by the State for its application.

((e) As part of the information specified in Part IV of the application, Program Narrative, the application shall discuss—

(1) How the State as appropriate, will develop or modify, its plan in a manner consistent with the requirements for State plans in Subpart B of this part, including an estimated completion date for each step in the process of development or modification;

(2) The current status of the State's emergency conservation planning activities;

(3) The State's management and organization for planning process including—

(i) The agency and the organizational unit within the agency responsible for developing the State emergency energy conservation plan;

(ii) The relationship of the agency and organizational unit to other relevant State government agencies (e.g., Department of Motor Vehicles), and

(iii) The name, title, address, and telephone number of the principal contact in the State for emergency energy conservation planning matters.

(4) The coordination and consultation activities which the State will undertake to assure consultation with representatives of affected businesses and local governments and an opportunity for public comment in the preparation of the State plan and any amendment thereto, including—

(i) Identifying, preliminarily, the local government and private organizations with whom the State intends to seek coordination and consultation;

(ii) Discussing the role of the state and areawide planning organizations in the emergency planning process; and

(iii) Identifying the mechanisms for coordination and consultation that the State will use.

(5) Where planning funds are requested, planning tasks as set forth in the immediately following subparagraphs—

(i) The application shall include a brief description of the various emergency energy conservation measures the State is considering. Measures identical to those in subparts E and F of this part need only be listed; all other measures, including those which are similar but not identical, shall be described.

(ii) The application shall include a brief description of the methodologies that the State intends to use for evaluating the social, economic, and environmental impact of proposed emergency energy conservation measures as well as the impact of such measures on energy demand or consumption.

A State may use any available DOE standards in developing evaluation methodologies. Alternatively, the application shall indicate when and how the State plans to develop such methodologies.

(iii) The application shall describe the process the State intends to use to develop, analyze, and review emergency energy conservation measures.

(iv) The application shall identify and describe any legal, institutional, financial, technological, and attitudinal barriers to development and implementation of the State plan. The State shall indicate how it intends to resolve any such barriers. If available, the States shall provide an implementation cost estimate for each measure.

(v) The application shall identify technical assistance needed to develop or modify the State's plan, and the source or sources from which the assistance has been or will be sought.

(vi) The application shall contain an estimated budget for completing emergency energy conservation activities for the next fiscal year.

(6) The application shall discuss the specific steps the State will take and the time schedules for these steps the States will use to comply with Part III of OMB Circular A-95 in connection with the development of the State's emergency energy conservation plan.

§ 477.75 Deadline for grant applications.

(a) For fiscal year 1981, the application shall be submitted within 60 days after the effective date of this subpart.

(b) The applicant may request an extension beyond the deadline established in subsection (a) of this section by submitting a written request to the Regional Representative at least two weeks before the pertinent deadline. The Regional Representative may grant an extension for a period not to exceed 30 days if the Regional Representative determines that participation by the State submitting the request is likely to result in significant progress toward achieving the purpose of this subpart.

§ 477.76 Review and approval of State applications.

(a) The Regional Representative shall review each application. If the Regional Representative determines that the application both meets the requirements of this subpart and outlines an approach which is likely to lead to the timely development or modification of a State energy conservation plan which will fulfill the intent of the Act, a grant award shall be made to the State for the development or modification of a State emergency energy conservation plan under the Act.

(b) If the Regional Representative finds that the application is not acceptable, the Regional Representative shall mail to the applicant a written statement explaining why DOE did not find the application acceptable and shall provide the State a reasonable period of time to submit an amended application for reconsideration by DOE.

(c) If an application has been amended and the Regional Representative still cannot make the determinations required by subsection (a), the Regional Representative shall notify the applicant that its application has been disapproved. This disapproval may be appealed in accordance with § 477.78(b).

§ 477.77 [Reserved].

§ 477.78 General requirements.

(a) Except as otherwise provided in this subpart, the award and administration of grants under this subpart shall be governed by 10 CFR Part 600, DOE Assistance Regulations.

(b) A final decision by DOE to disapprove a State application or a

finding by DOE that subsequent to award a State has failed to comply with the requirements of this subpart, may be appealed in accordance with the procedures set forth in 10 CFR Part 1024, Procedures for Financial Assistance Appeals.

§ 477.79 Reports.

Each State receiving a grant under this part shall submit quarterly to the Regional Representative a financial status report using the form contained in OMB Circular A–102, and a program performance report. The quarterly program performance reports shall include one copy of any emergency energy conservation planning documents finalized during the quarter or changes to previously submitted planning documents.

§ 477.80 Unallowable costs.

Federal funds provided under this subpart shall not be used to—

(a) purchase land or buildings, or interests therein;

(b) construct or repair buildings or structures;

(c) conduct technology research and development or purchase equipment to support such research and development; or

(d) conduct demonstrations intended to establish the feasibility of energy technologies.

§ 477.81 [Reserved].

§ 477.82 [Reserved].

§ 477.83 [Reserved].

§ 477.84 [Reserved].

[FR Doc. 81–2575 Filed 1–23–81; 8:45 am]
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Federal Register

Monday
January 26, 1981

Part V

Environmental Protection Agency

Timber Products Processing Point Source Category

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 429

[WH-FRL 1697-8]

Timber Products Processing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today issuing final regulations which limit the discharge of pollutants into navigable waters and publicly owned treatment works from existing and potential new sources in the timber products industry. The intended effect of these regulations is to reduce the amount of conventional and toxic pollutants presently discharged by the timber industry. Today's action revises part but not all of the existing effluent limitations and standards for the timber industry. Nevertheless, for the sake of completeness, the regulations published in this notice incorporate both the changes to the existing timber effluent limitations and standards made in the course of this rulemaking and the limitations and standards which were not changed. The published regulations thus completely supersede all previously existing effluent limitations and standards for the timber products processing point source category.

DATE: These regulations shall become effective March 11, 1981.

FOR FURTHER INFORMATION CONTACT: Richard Williams 202-426-2554.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 100.01 (45 FR 26048), the regulations developed in this rulemaking shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on February 6, 1981. The compliance date for the newly issued BCT regulations is as soon as possible, but in any event no later than July 1, 1984. The compliance date for the newly issued NSPS and PSNS regulations is the date the new source subject to those regulations commences discharge.

Under section 509(b)(1) of the Clean Water Act judicial review of these regulations is available only by the filing of a petition for review in the United States Court of Appeals within ninety days of the date these regulations are considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Those portions of the existing timber effluent guidelines limitations and standards that are not substantively amended by this notice are not subject to judicial review nor is their effective date altered by this notice.

Proposed on October 31, 1979, the regulations developed in this rulemaking have been exposed to extensive public comment. This Section describes the legal authority and background, the technical and economic data bases, the changes made since proposal, and other aspects of these regulations. This section also summarizes the public comments received on the proposal and sets forth the Agency's response.

These regulations are supported by four major documents, all of which are available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in *Development Document for Effluent Limitations Guidelines New Source Performance Standards and Pretreatment Standards for the Timber Products Processing Point Source Category.* The Agency's economic analysis is presented in *Economic Impact Analysis of Alternative Pollution Control Technologies, Wood Preserving Subcategories of the Timber Products Industry,* and *Economic Impact Analysis of Alternative Pollution Control Technologies, Wet Process Hardboard and Insulation Board Subcategories of the Timber Products Industry.*

Technical information may be obtained from Richard E. Williams, Effluent Guidelines Division (WH-552), EPA, 401 M Street SW., Washington, D.C. 20460, or through calling (202) 426-2554. Copies of the technical document may be obtained from the Distribution Officer at the above address, or through calling (202) 426-2724. The economic analyses may be obtained from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

The Record will be available for public review three weeks after the [Federal Register publication date of the regulations] in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M St. SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

I. Legal Authority

These regulations are being promulgated under the authority of sections 301, 304, 306, 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"). These regulations are also being promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train,* 8 ERC 2120 (D.D.C. 1976), as modified at 12 ERC 1833, March 9, 1979).

II. Scope of this Rulemaking

The Timber Products Processing Industry (timber industry) consists of a diverse group of manufacturing plants whose primary raw material is wood and whose products range from finished lumber and other wood building products to hardboard and preserved wood. This industrial group is comprised of thousands of industrial operations, including nearly 11,000 sawmills, 3,000 millwork and finishing operations, 500 veneer and plywood plants, more than 415 wood-preserving plants, 75 particleboard plants, 16 dry process hardboard plants, 11 wet process hardboard plants, 10 insulation board plants, and 5 plants producing both wet process hardboard and insulation board. The size of these operations ranges from small family-owned concerns to facilities with over a thousand employees. Their geographical distribution follows the natural range of timberland in the Pacific Northwest, Southeast, North Central and Northeastern United States.

These regulations establish or amend best practicable control technology currently available (BPT), and best conventional pollutant control technology (BCT) effluent limitations guidelines, new source performance standards (NSPS), and pretreatment standards for new sources (PSNS) for some subcategories of the Timber Products Processing Point Source Category. They effectively build upon the water pollution control requirements already instituted for the timber industry in the previous round of rulemaking, which took place in 1973-1976. The previous round of rulemaking was accomplished in three phases. In the first phase, EPA promulgated BPT, BAT, NSPS, and PSNS regulations for a number of subcategories of the timber industry (April 18, 1974, 39 FR 13942; 40 CFR Part 429, Subparts A-H). In the second phase, EPA promulgated BPT, BAT, NSPS and PSNS regulations for the remaining subcategories of the timber industry (January 16, 1975, 40 FR 2804; 40 CFR Part 429, Subparts I-M). In the third phase, EPA promulgated PSES regulations for all the timber subcategories (December 9, 1976, 41 FR 53930; 40 CFR Part 429, Subparts A-M).

The current round of rulemaking takes these already promulgated regulations as a starting point and modifies them, where necessary, to bring them into conformity with the 1977 Amendments' emphasis on the control of toxic pollutants and their alteration of the pollution control requirements for direct dischargers of conventional pollutants. These final regulations—the product of the current rulemaking effort—do not differ markedly from the old regulations. Changes are being made in eight of the preexisting timber industry subcategories. These changes consist of the following:

(1) the old Wet Process Hardboard subcategory is being divided into two parts and the two old Insulation Board subcategories are being combined into one subcategory,

(2) a new no discharge of process wastewater PSNS is being promulgated for the Wood Preserving-Water Borne or Nonpressure subcategory (previously the Wood Preserving subcategory).

(3) a new no discharge of process wastewater NSPS for the Wood Preserving Steam subcategory and a new no discharge of process wastewater PSNS for the Wood Preserving Steam and Boulton subcategories are being promulgated.

(4) new BPT, BCT, and NSPS limitations and standards are being promulgated for the Hardboard and Insulation Board subcategories.

(5) the previously promulgated BAT limitation for the Hydraulic Barking subcategory is being withdrawn.

(6) NSPS for the wood furniture and fixture production with water wash spray booths or laundry facilities subcategory is being amended to make it conform with the existing BAT for this subcategory, which requires no discharge of process wastewater pollutants.

The Agency's methodology in developing these new regulations and its rationale for them are summarized below.

III. Legal Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a)). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT") (section 301(b)(1)(A)); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" (section 301(b)(2)(A)). New industrial direct discharges were required to comply with new source performance standards (NSPS) under section 306, based on best available demonstrated technology (BADT); and new and existing dischargers to publicly owned treatment works (POTW) were subject to pretreatment standards under sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Act, pretreatment standards were to be enforceable directly against dischargers to POTW (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT and regulations setting forth new source performance standards. In addition, sections 304(f), 307(b) and 307(c) required promulgation of regulations for pretreatment standards and section 307(a) required promulgation of effluent standards applicable to all dischargers of toxic pollutants.

The EPA was unable to promulgate many of these guidelines and standards by the dates contained in the Act. In 1976, EPA was sued by several environmental groups and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgation for 21 major industries of BAT effluent limitations guidelines, and pretreatment standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc., v. Train,* 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979; 12 ERC 1833.

On December 27, 1977 the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation of many of the basic elements of the Settlement Agreement program for toxic pollutant control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for control of toxic pollutants, including the 65 "priority" pollutants, and classes of pollutants which Congress declared "toxic" under section 307(a) of the Act. Likewise, EPA programs for new source performance standards and pretreatment standards are now aimed principally at control of toxic pollutants. Moreover, to strengthen the toxics control programs, section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMP) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 revises the control program for nontoxic pollutants. Instead of BAT for "conventional" pollutants identified under section 304(a)(4), (including Biochemical Oxygen Demand, suspended solids, fecal coliform, oil and grease and pH), the new section 301(b)(2)(E) requires achievement by July 1, 1984 of "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT). For nontoxic, nonconventional pollutants, sections 301(b)(2)(A) and 301(b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment, or July 1, 1984, whichever is later, but not later than July 1, 1987.

A somewhat more in depth review of the meaning of BPT, BAT, BCT, NSPS, PSES and PSNS is provided below.

1. *Best Practicable Control Technology (BPT).*

The Clean Water Act requires existing industrial dischargers to achieve "effluent limitations requiring the application of the best practicable control technology currently available" (BPT) by July 1, 1977. Attainment of BPT level technology thus constitutes the first step in the two step reduction of existing direct discharger effluent levels contemplated by the Act.

BPT is generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory. This average is not based on a broad range of plants in an industry subcategory but on performance levels achieved by the best plant or plants.

In establishing BPT limitations, the Agency considers the total cost of the application of technology in relation to

the effluent reduction benefits to be achieved from the technology. The cost/benefit inquiry for BPT is a limited balancing, which does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT the general environmental effects of the pollutants and the costs and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. See, *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

2. *Best Available Technology (BAT).*

The Clean Water Act of 1977 requires the achievement by July 1, 1984, of effluent limitations requiring the application of the "best available technology economically achievable" (BAT) for control of toxic and nonconventional pollutants. It thereby establishes BAT as the principal national means of controlling the discharge of toxic and nonconventional pollutants directly to navigable waters. BAT is not based on the average of the best performance within an industrial subcategory but on the very best existing performance in the industrial subcategory or category or, alternatively, the best performance capable of being achieved by transfer of technology.

In arriving at BAT, the Agency need not consider the costs of applying a technology in relation to the effluent reduction benefits to be achieved from the technology. No such cost/benefit analysis is required. All that is required is that the Agency consider the cost of applying the technology at some point. The Agency thus retains considerable discretion in assigning the weight to be accorded costs in its BAT determination. See, *Weyerhaeuser* v. *Costle, supra; American Paper Institute* v. *Train*, 543 F.2d 328 (D.C. Cir. 1976).

3. *Best Conventional Pollutant Control Technology (BCT).*

The 1977 amendments added sections 301(b)(2)(E) and 304(b)(4)(B) to the Act, which revises the control program for conventional pollutants by replacing BAT limitations with limitations based on the "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing sources. Section 304(a)(4) defines conventional pollutants to include BOD, TSS, fecal coliform pH and any additional pollutants defined by the Administrator as "conventional." (Note: The Administrator defined Oil and Grease as a conventional pollutant on July 30, 1979, 44 FR 44501).

BCT requires that limitations for conventional pollutants be assessed in light of a new "cost reasonableness" test. This test is described and defined in Best Conventional Pollutant Control Technology, Reasonableness of Existing Effluent Limitation Guidelines (44 FR 50732, August 29, 1979). The BCT test compares the cost incurred by an industrial point source in removing a pound of conventional pollutants (BOD and TSS) beyond BPT limitations, to the cost incurred by an average size POTW in removing a pound of BOD and TSS. If the industrial cost is lower, the proposed limitation passes the cost reasonableness test. Details concerning the methodology of the cost test used to determine BCT are contained in Section IX of the Development Document.

4. *New Source Performance Standards (NSPS).*

Section 306 of the Act requires promulgation of standards of performance for new sources. The basis for these new source performance standards (NSPS) is the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Congress therefore directed EPA to base NSPS on the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

5. *Pretreatment Standards for Existing Sources (PSES).*

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through a POTW untreated or inadequately treated or which interfere with or are otherwise incompatible with the operation of POTW. As noted in the legislative history of the Clean Water Act of 1977, they are to be technology based, analogous to the best available technology for removal of toxic pollutants.

One of the objectives of PSES is to ensure parity between the treatment of indirect dischargers' wastewater and the treatment of direct dischargers' wastewater. At a minimum, Congress intended that the pollutant reduction achieved by the combination of pretreatment and treatment at the municipal treatment works would equal the pollutant reduction achieved by a direct discharger applying BAT treatment. Consequently, where removal by a POTW of an indirect discharger's toxic effluent is less than the removal achieved, by a comparable direct discharger's BAT system, pretreatment is needed. Another objective of PSES is to ensure that toxic pollutants in POTW influent do not contaminate the sludge and thereby limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The general pretreatment regulations which served as the framework for the pretreatment regulations for the timber industry, can be found at 40 CFR Part 403.

6. *Pretreatment Standards for New Sources (PSNS).*

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. Like PSES, these standards should prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of the POTW. New indirect dischargers have the opportunity to incorporate the best demonstrated process changes, in-plant controls, and to use plant site selection to ensure adequate treatment system installation. Consequently, PSNS is somewhat analogous to the best available demonstrated technology.

IV. Summary of Methodology and Data Gathering Efforts

In developing these regulations, EPA's first basic task was to decide whether the subcategorization scheme employed in the previous regulation remained appropriate. This inquiry required gathering data on such factors as raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, treatment technology availability and cost to determine whether these factors were sufficiently alike to justify applying the same effluent limits to all facilities within each established subcategory.

The second basic step was to decide which subcategories required altered effluent limitations or standards, given the change in emphasis mandated by the 1977 Amendments, and to decide what those altered effluent limits would be. This step required gathering data on the wastewater characteristics of the various subcategories, the wastewater treatment technologies capable of controlling these pollutants, the degree of control achieved by these technologies and the economic impact of

requiring these or comparable technologies.

Existing sources of data for these inquiries included past regulation development studies of the industry, and information obtained from EPA Regions, State regulatory offices, academic institutions, and trade associations. Review of this data indicated, however, that EPA needed additional information on (1) the sources and volumes of wastewater; (2) the amount of pollutants in the wastewater (toxic and otherwise); and (3) wastewater control techniques and their costs; i.e. both in-process and end-of-process treatment and disposal systems either in use or capable of being used by the industry.

EPA undertook to acquire this additional data in two ways. First, under the authority of section 308 of the Act. EPA sent a technical data collection portfolio (DCP) to 315 timber industry plants (243 of which responded). A companion DCP was sent to timber industry plants to collect economic information. Second, EPA visited production facilities to interview personnel, examine treatment plant design and historical operating data, and sample plant waste streams. The principal object of the sampling program was to determine to what extent any of the toxic pollutants identified by EPA as "priority" toxic pollutants were present in timber industry wastewaters and to what extent they were removed by existing technologies. This sampling was conducted in two phases. In the first, or "screening" phase, the purpose was merely to determine whether any of the priority pollutants were present. In the second, or "verification" phase, the Agency retested certain subcategories singled out in the first phase for further study because of the levels of toxic pollutants present. Nineteen plants in three segments were visited, including seven wood preserving plants, seven hardboard plants, and five insulation board plants. Nine plants were visited twice.

Following the above sampling program and identification of the subcategories which appeared to require additional effluent limitations and standards, EPA identified several distinct control and treatment technologies, including both in-plant and end-of-process technologies which are either in use or capable of being used in the timber industry. The Agency compiled and analyzed both historical and newly generated data on the effluent quality resulting from the application of these technologies. The long term performance, operational limitations, and reliability of each of the treatment and control technologies were also identified. In addition, EPA considered the nonwater quality environmental impacts of these technologies, including impacts on air quality, solid waste generation, and energy requirements.

The Agency then estimated the costs of compliance to the industry for each control and treatment technology, relying upon two separate methodologies. NSPS and PSNS costs were derived from unit cost curves applied to model plant characteristics (production, flow and pollutant loads) developed for each subcategory. BPT and BCT costs for the wet process hardboard segment and PSES costs for the wood preserving subcategories were derived from unit cost curves applied on a plant-by-plant basis. This estimate, prepared for every potentially affected plant in the technical data base, took into consideration plant specific wastewater characteristics and flows, as well as technology currently in place. The costs themselves were derived from unit cost curves developed by standard engineering analysis for each unit process within a control and treatment technology system (pump station, settling basin, etc.). These unit process costs were added to yield total cost at each treatment level. After confirming the reasonableness of both methodologies by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs.

Upon consideration of each of these factors, EPA identified various control and treatment technologies as BPT, BCT, PSES, PSNS, and NSPS. The Agency then formulated effluent limitations guidelines and standards which required the attainment of the effluent reduction achieved by the proper operation of these or equivalent technologies. (A more complete description of the Agency's methodology, data gathering efforts and analytical sampling procedures can be found in the Development Document Section III and in the Preamble to the Proposed Regulation (44 FR 62810, October 31, 1979).

V. Additional Data Gathering

Between the time of proposal and the date of promulgation, the Agency engaged in a number of additional data gathering activities. These activities may be summarized as follows: (1) the Agency studied the ten plants which were considered closure candidates under the proposed wood preserving PSES to determine whether its original closure estimate was valid and whether these plants had alternative means to achieve the proposed standard; (2) the Agency collected additional data on the performance of POTW in treating and removing PCP; (3) the Agency collected additional effluent data from the wet process hardboard industry; and (4) the Agency conducted a detailed study of one plant in the wet process hardboard industry which exhibited an atypically high raw waste load. The purpose of this study was to develop information to assist in developing a regulatory strategy for this plant.

With the exception of the effluent data from the wet process hardboard industry, the additional data gathered was either corroborative of the data originally gathered or had no bearing on the Agency's final decision. The additional wet process hardboard data, which had some bearing on the final effluent limitations set for that industry, were collected in response to the industry's criticisms. The data were provided by industry members. Consequently, the Agency did not specifically make any of the additional data gathered available for a new round of public comment.

A full discussion of the results of these additional data gathering efforts and their relevance to the final rulemaking can be found below in the relevant sections of this preamble.

VI. Summary of Proposal and Changes From Proposal

A. Wood Preserving Segment

1. *Industry profile.*

There are more than 415 wood preserving plants operated by over 300 companies in the United States. The plants are concentrated in two areas, the Southeast from east Texas to Maryland and along the Northern Pacific Coast. These areas correspond to the natural ranges of the southern pine and Douglas fir—western red cedar, respectively.

Approximately 250 million cubic feet of preserved wood products are produced each year. The most commonly treated woods are southern pine, Douglas fir, and oak, although railroads use large quantities of other hardwoods where they are available. Railroad ties constitute the largest use of treated wood, accounting for 95 million cubic feet in 1976. Lumber and timbers accounted for 67 million cubic feet, and treated poles accounted for 53 million cubic feet. These three classes accounted for 84 percent of the volume of wood products which were treated in 1976.

The wood preserving process consists of two basic steps: (1) conditioning the

wood to reduce its natural moisture content and to increase its permeability; and (2) impregnation of the wood with preservatives. The conditioning of wood raw material ensures that the preserving chemicals are absorbed in sufficient amounts. It may be performed through a variety of methods including (1) air drying, which consists of long term storage in the open air; (2) dry kiln conditioning, which consists of applying dry heat to the wood in an enclosed structure; (3) steam conditioning, which involves subjecting the wood to a steam pressure in a pressurized treating cylinder, followed by a vacuum cycle which removes moisture from the wood; and (4) Boulton conditioning, which involves heating the wood in the treating cylinder immersed in oily preservative under a partial vacuum.

After conditioning, the wood can be treated with preservatives through the use of either nonpressure processes, which involve immersing the conditioned wood in an open tank containing the preservative chemicals, or pressure processes, which rely on pressure to force the preservative into the wood. The most commonly used preservatives in these treatment processes are creosote, pentachlorophenol (PCP), and various formulations of water soluble inorganic chemicals. Eighty percent of the plants use at least two of the three types of preservatives. Many plants treat with one or two preservatives and a fire retardant consisting of inorganic salts.

The principal determinant of the amount of wastewater generated by wood preserving plants is the conditioning process employed. Air and kiln drying generate the least amount of wastewater followed by the Boulton and the steam conditioning processes. The principal determinant of the actual wastewater composition is the kind of preservative used to treat the wood. Wastewaters from plants which treat solely with inorganic salts contain high concentrations of copper, chromium, arsenic, and other heavy metals. These wastewaters, which are almost invariably generated by plants which employ the air or kiln drying process, are low in volume and are recycled for use as make up water in new preservative batches. Wastewaters from plants which treat with creosote or pentachlorophenol contain toxic organic pollutants such as pentachlorophenol, benzene, toluene, and the polynuclear aromatic components (PNAs) of creosote that are contained in the entrained oils. These wastewaters, generated by plants which use the Boulton or steam conditioning processes, tend to be acidic and contain high oil and COD concentrations. They may also contain traces of heavy metals at plants which use the same retort for both waterborne salts and oil type preservatives, or which apply dual treatments to the same stock i.e., treat with two preservatives, one organic and one inorganic.

About 125 plants use both organic and inorganic preservatives to treat wood, although the organic preservative wood treating system usually is separate from the inorganic system. Analytical data generated during this study and earlier analyses of wood preserving wastewaters concluded that, even when the organic and inorganic process water/wastewater systems are kept separate, there is often some inorganic material ("fugitive metals") in the organic treatment system. This cross contamination occurs from such activities as the use of the same carts to move wood in and out of both organic and inorganic treating cylinders, and drippage from the inorganic operation into the organic side. Analytical data show that the total concentrations of fugitive metals are always less than 5 milligrams per liter, and generally well below 1 mg/l.

2. *Previously Applicable Subcategorization Scheme and Effluent Limitation Guidelines and Standards.*

The effluent limitation guidelines and standards promulgated in the 1973–1976 round of rulemaking divided the wood preserving segment into three subcategories: Wood Preserving, Wood Preserving—Steam, and Wood Preserving—Boultonizing. See 40 CFR Part 429.

The primary basis for this subcategorization scheme was the conditioning process used preparatory to preservative treatment. This scheme was employed because the conditioning process tended to correlate closely with the volume of process wastewater generated and with the existence of effective wastewater technology. This correlation between conditioning process and treatment capability is reflected in the old effluent limitations and standards for the various subcategories. For instance, the previously promulgated BPT, BAT, NSPS and PSES limitations and standards for the Wood Preserving subcategory—which for the most part included plants employing air and kiln drying conditioning methods—required no discharge of process wastewater pollutants, because such plants generated low volumes of wastewater and had available a widely used recycling technology which could achieve zero discharge. Similarly, the previously promulgated BPT, BAT, and NSPS limitations and standards for the Boultonizing subcategory—which included plants utilizing the Boulton conditioning process—required no discharge of wastewater pollutants because these plants also were able to meet a no discharge limitation (although PSES and PSNS for this subcategory allowed the introduction of process wastewater into a POTW). On the other hand, the previously promulgated BPT, BAT, NSPS, PSES and PSNS effluent limitations and standards for the Wood Preserving—Steam subcategory plants—which for the most part included plants employing the steam or vapor drying conditioning processes—allowed the direct discharge of wastewater pollutants to navigable waters and the introduction of process wastewater into a POTW because these plants tended to generate more wastewater than plants in other subcategories.

3. *Summary of the Proposed Regulation and Changes from the Proposal.*

a. Subcategorization.

In the proposed regulation, EPA elected to retain the subcategorization scheme employed in the previously promulgated regulations with a few minor exceptions. These exceptions consisted of changing the title of the "Wood Preserving" subcategory to "Wood Preserving-Water Borne or Nonpressure;" changing the language of the "Wood Preserving—Water Borne or Nonpressure" subcategory description; and shifting from the Wood Preserving—Steam to the Wood Preserving—Water Borne or Nonpressure subcategory those plants which treated with the preservative fluorchromium-arsenic-phenol (FCAP). EPA proposed this latter change because FCAP is a waterborne solution which, though capable of being applied to steam conditioned wood, can also be recovered by the same zero discharge recycling technique as other waterborne preservatives.

The Agency received no comments concerning its proposed subcategory changes. Therefore, with the exception of a few minor clarifying word changes, it is adopting the proposed subcategorization scheme in the final regulation.

b. Water Borne or Nonpressure Subcategory.

With the exception of PSNS, EPA proposed no alteration in the existing effluent limitations and standards for the Water Borne or Nonpressure subcategory. This was because the existing BPT, BAT, NSPS, and PSES limitations and standards already required no discharge of process wastewater pollutants. EPA proposed to

alter the PSNS requirement—from compliance with general pretreatment requirements to no discharge—because it was considered anomalous to have a no discharge requirement for existing indirect dischargers and not have a similar requirement for new source indirect dischargers. After all, new source indirect dischargers generally have greater opportunities than existing indirect dischargers to install the requisite control technology.

The Agency received no comments specifically directed to its proposed alteration of the PSNS requirement and is accordingly adopting the proposal in the final regulation.

c. Boulton and Steam Subcategories.

(i) BPT, BCT, BAT, NSPS—Boulton.

EPA proposed no alteration in the existing BPT, BAT and NSPS limitations for Boulton subcategory plants because the existing BPT, BAT and NSPS limitations require no discharge of process wastewater pollutants. These existing limitations, which are believed necessary to control the Boulton subcategory plants' toxic pollutant discharge, will therefore continue in force. Because of the existing zero discharge BPT limitation, no BCT is being promulgated.

(ii) BPT, BCT, BAT, NSPS—Steam.

The Agency considered developing new BAT and BCT limitations for the Wood Preserving-Steam subcategory plants, since the existing BAT and BPT limitations permit the discharge of wastewater pollutants subject to limits on the pollutants Oil and Grease, pH, COD and phenols as measured by *Standard Methods.* The Agency's study of wood preserving plants, however, identified only one plant in the Steam subcategory which could be described as a direct discharger of process wastewater. This plant is an intermittent direct discharger, discharging only when precipitation occurs with such frequency and magnitude that the plant's wastewater treatment system cannot contain the precipitation and the plant's runoff. The Agency concluded that national effluent limitations were inappropriate for this single plant and proposed to withdraw the existing BAT limitations for the Steam subcategory, leaving the appropriate controls and limitations for this plant to be determined by the permit issuer using best engineering judgment. It also proposed to refrain from developing BCT limitations. Because no commenter objected to the Agency's proposed decision to withdraw the existing BAT limitations and refrain from developing BCT limitations, the Agency's proposal has been incorporated in the final regulations.

The proposed regulation amended the existing NSPS for Steam subcategory plants to require no discharge of process wastewater. This was done for several reasons. First, since at least ninety percent of all wood preserving plants are already achieving zero discharge, EPA considered new source Steam subcategory plants to be capable of achieving this level of control. Second, new source Steam subcategory plants have opportunities, not readily available to existing ones, to install treatment technology such as spray evaporation or spray irrigation which can eliminate the discharge of contaminated wastewater. Third, the Agency's economic impact analysis concluded that the cost of designing and installing the proper systems needed to achieve zero discharge status would not hinder the addition of new capacity. No commenter took issue with this proposed alteration of Steam subcategory NSPS requirements. Consequently, the proposed NSPS has been adopted in the final regulation.

(iii) PSES—Boulton and Steam. The most significant and the most controversial aspect of the Agency's proposal for the wood preserving segment was its proposal to amend the existing PSES requirements for the Steam and Boulton subcategories to include a prohibition on the discharge of pentachlorophenol (PCP). The rationale for the proposed no discharge PCP limitation was: (1) the relatively high PCP concentrations in Boulton and Steam subcategory wastewaters; (2) the Agency's opinion that PCP passes through, is not effectively treated by, or is otherwise incompatible with publicly owned treatment works; and (3) the availability of a demonstrated and widely utilized technology for achieving zero discharge. The Agency calculated that the proposed no discharge requirement for PCP would eliminate the discharge of approximately 16 pounds per day of PCP and would cost the 27 affected Boulton and Steam plants $4,087,000 and $1,037, in capital and annualized costs, respectively. The Agency's economic impact analysis estimated that between 3 and 10 plants employing 83 to 404 workers might close if this standard were promulgated.

The Agency received a number of comments attacking its proposed zero discharge of PCP standard. The commenters argued that (1) the Agency has failed to meet the statutorily-required showing that PCP interferes with, passes through, or is otherwise incompatible with a POTW, (2) the effluent reduction achieved—the elimination of 16 pounds per day of PCP discharge spread over 27 affected plants—does not justify the economic costs involved, (3) EPA has underestimated the economic costs and impact of the zero discharge PCP limitation, because all indirect discharging plants, i.e., a total of 42 plants rather than the 27, would be required to eliminate the discharge of all process wastewater, since PCP can be detected in wastewater from all wood preserving plants, regardless of whether or not the plants treat with PCP and (4) the zero discharge PCP limitation will simply transfer PCP to the air or to wastewater treatment sludge. One commenter argued that EPA should strengthen the proposed limitation by adding a direct limitation on PNAs.

After careful consideration of these comments, the Agency has come to the conclusion that the proposed zero discharge limitation for the Boulton and steam subcategories was too stringent and that it should simply let the existing PSES limitations continue in force. Several considerations play a part in this decision, no one of which is determinative.

The first such consideration is the economic impact of the proposed regulation. Since the proposed regulation was published the economic impact picture has changed: the Agency has learned that two of the ten plants identified as closure candidates have eliminated the discharge of process wastewater to a POTW and one plant has gone out of business. Therefore, these plants would not be affected by the proposed no discharge standard. Also, as a result of the Agency's detailed study of the remaining seven plants identified as closure candidates, cost of compliance estimates were revised for some plants. Because of these cost revisions, two plants were removed from the list of possible closure candidates, leaving three to five potential closures. Nevertheless, the Agency is concerned that for this industry the several million dollar costs associated with the proposed no discharge standard and the current projection of three to five closures out of a total of twenty-four affected plants is too high. This is especially true in light of the fact that the present oil and grease pretreatment requirement of 100 mg/1 effectively guarantees control of PCP to the level of 15 mg/1. This existing standard ensures significant reduction in the concentration of PCP in wood preserving wastewater and thus reduces the Agency's concern for PCP pass through. Another consideration is that the effluent reduction benefits of the

proposed no discharge PSES, though of some consequence, are not compelling.

EPA would like to emphasize that its decision to drop the no discharge of PCP pretreatment standard for existing sources is a close one and does not reflect a belief that PCP is a pollutant compatible with the operation of a POTW. Data which has come into the Agency's hands since proposal and theoretical considerations strongly suggest that PCP passes through POTW inadequately treated and is thus deserving of concern. Indeed, EPA's final PSNS limitation of zero discharge, discussed below is to a large extent based on EPA's concern for PCP pass through. Consequently, EPA would like to alert POTW to the potential desirability of requiring monitoring for PCP and PNAs should Boulton and Stream subcategory plants not be meeting their 100 mg/1 Oil and Grease limitation.

(iv) PSNS—Boulton and Steam. The proposed regulation changed the PSNS requirement for both the Steam and Boulton subcategories, from compliance with the general pretreatment regulations to a prohibition on the introduction of process wastewater pollutants into publicly owned treatment works. The Agency's rational for this proposed no discharge pretreatment standard was an extension of its rationale for the proposed PSES standard: (1) the presence in Boulton and steam subcategory wastewaters of pollutants such as PCP, and PNAs, which either pass through or are otherwise incompatible with publicly owned treatment works and (2) the availability of a demonstrated and widely utilized technology for achieving zero discharge of process wastewater pollutants.

Commenters objected to EPA's proposed PSNS standard on basically two grounds. First, they argued that EPA's proposed zero discharge PSNS standard incorrectly assumes that NSPS and PSNS require the same level of control and ignores the statutory language that PSNS standards are merely intended to prevent the discharge into treatment works of pollutants which "may interfere with, pass through, or otherwise be incompatible with such works." Second, they argued that PSNS should be no more stringent than PSES, since it is based on the same statutory criteria as PSES.

EPA has considered these comments and has decided to promulgate the no discharge of process wastewater PSNS standard as proposed. Reconsideration of the proposed PSES persuaded EPA to withdraw that standard, primarily because of the high projected costs, the presence of existing controls and the limited pollution reduction achievable. The issue of costs is, however, of lesser consequence in the case of new source pretreatment standards. Unlike existing sources, new sources have flexibility in equipment selection, plant design, and plant siting that is not always available to an existing plant and that allows a new source to achieve a no discharge of process wastewater pollutants level of control without prohibitive costs. In substantiation of this, the Agency's economic impact analysis of the timber industry concludes that the cost of installing no discharge technology will not hinder the addition of new capacity. Furthermore, the pretreatment goal of ensuring parity in the treatment of indirect and direct dischargers' effluent assumes special importance in the case of new sources, since such sources have a better opportunity than existing sources to choose their method of discharge. In the absence of a PSNS, such sources might be motivated to discharge their wastewater pollutants to a POTW rather than comply with the no discharge NSPS.

The no discharge PSNS will prevent the introduction into publicly owned treatment works of pollutants such as PCP which, as noted above, has a demonstrated tendency to pass through the operation of the treatment works. It will thereby ensure that the treatment of PCP in indirect, dischargers' effluent is at least as good as the treatment provided by comparable direct discharger NSPS systems capable of achieving zero discharge. See Comments 1 and 5 for a more complete discussion of these issues.

4. *Cost and Economic Impact.*

The results of the economic analysis are summarized in the preamble to the proposed timber regulations (44 FR 62810, October 41, 1979) and the *Economic Impact Analysis of Alternative Pollution Control Technologies, Wood Preserving Subcategories of the Timber Products Industry,* EPA 440/2–80–087, December 1980, EPA 440/2–70–018.

The results of the analysis are also summarized here.

Direct Discharging Plants Limitations—BPT, BCT, BAT. The Agency has not promulgated any new BPT, BCT, or BAT limitations for wood preserving plants. Therefore, there are no costs or economic impacts associated with BPT, BCT or BAT.

Indirect Discharging Plants—PSES. The economic analysis of the proposed pretreatment standards concluded that, of the 27 indirect discharging wood preserving plants affected by the proposed requirements, three to ten were potential closure candidates. These plants might be forced to close because of the costs associated with achieving zero discharge status. In light of that fact, EPA undertook a study of these potentially affected plants to determine whether the closure estimate was valid, and whether there were alternative means available to these plants to achieve the proposed limitations. Revised cost estimates for the 10 potential plant closures revealed that 2 of the candidates are now in the nonclosure category. In addition, one plant has closed and 2 others have met the proposed regulation and are therefore no longer affected.

The projected cost of removing the less than 16 lbs/day of PCP is over $4 million dollars for total investment and approximately 1 million dollars for annualized costs. The EPA has determined that, for the reasons stated above, these costs are too high.

Because the Agency has decided not to promulgate the proposed standard for zero discharge of PCP, or any new pretreatment standard for zero discharge of PCP, or any new pretreatment requirements for this sector, there are no increased costs or economic impacts associated with PSES.

New Sources—NSPS and PSNS. The proposed new source standards may require capital investment of $161,030–$209,200 and $223,810–$327,500 which represent from 4.9–6.3 percent or 3.4–5.0 percent of the estimated capital investment for new 2 and 5 cylinder plants, respectively. The operating costs resulting from the regulation may range from $35,150 to $39,480 for 2 cylinder plants and $46,260 to $57,280 for 5 cylinder plants. These costs are not expected to hinder the construction of new plants.

RCRA Costs. EPA has not conducted a formal analysis of the effect that the hazardous waste regulations promulgated under the authority of the Resource Conservation and Recovery Act (RCRA) will have on the costs of complying with the wood preserving regulations. However, as explained in more detail in Comment 3, the Agency has estimated that for most facilities subject to these regulations the RCRA costs will be either slight or nonexistent. EPA was unable to conduct such an analysis because RCRA standards governing the treatment, storage and disposal of hazardous wastes were not promulgated in time to conduct such a study.

5. *Nonwater Quality and Effluent Reduction Benefits.*

Sections 304(b) and 306 of the Clean Water Act require EPA to consider the

nonwater quality environmental impacts and energy requirements of effluent guidelines and standards. Consideration of these factors is necessary because the elimination or reduction of one form of pollution may aggravate other environmental problems. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation and energy consumption. This regulation was reviewed and approved by EPA personnel responsible for nonwater quality programs. While it is difficult to balance pollution problems against each other and against energy use, EPA believes this regulation best serves often competing national goals.

a. Air Pollution. The preamble to the proposal discussed preliminary information in the Agency's possession which indicated that there may be some transfer of PCP from the water medium to the air medium when evaporative technology used to achieve zero discharge is applied to wood preserving wastewaters containing PCP. The preamble requested information regarding the transfer of pollutants from water to air caused by the application of evaporative technologies. Although neither hard data nor information confirming transfer was submitted in response to this solicitation, the Agency's Office of Research and Development has initiated studies to provide additional information regarding this question. This information is not available for inclusion in this rulemaking.

Since the Agency has elected not to promulgate the proposed PSES requiring zero discharge of PCP and since the previously promulgated PSES (which is being retained in these regulations) does not require the application of evaporative technology, any potential for any increase in air pollution attributable to the PSES is eliminated. NSPS and PSNS, which require zero discharge of all process wastewater, may, however, result in the application of evaporative technology. Upon the completion of the studies on whether evaporation of wood preserving wastewater results in transfer of toxic pollutants from water to the air, the Agency will further consider this matter.

b. Solid Wastes. Solid wastes generated by the wood preserving segment of the timber industry contain toxic pollutants as well as conventional and nonconventional pollutants. Pentachlorophenol (PCP) and polynuclear aromatic compounds (PNAs) are found in solid wastes generated by plants that use PCP as a preservative or treat wood with creosote. Small amounts of toxic metals are also found in solid wastes generated by plants treating with either or both preservatives. The RCRA hazardous waste regulations promulgated on May 19, 1980 identify wood preserving bottom sludges as hazardous wastes subject to these regulations.

Information presented in the preamble to the proposed regulations indicated that the volume of sludge generated did not vary appreciably with the wastewater treatment practices employed by the plants. About 48 plants provided information regarding sludge volume. This information indicated that plants meeting BPT level of control generated about 0.014 cubic yard of sludge per thousand cubic feet of wood treated; plants meeting a no discharge of process wastewater level of control generated an estimated 0.016 cibic yard of sludge per thousand cubic feet of wood treated, and plants meeting the previously promulgated PSES are generating about 0.018 cubic yard of sludge per 1,000 cubic feet of wood treated. Inasmuch as safe disposal of this sludge will be effectuated under RCRA, the Agency anticipates no adverse environmental impacts resulting from the generation of this sludge.

c. Energy Requirements. The Agency originally estimated that the twenty-seven plants (now twenty-four) that would have been affected by a no discharge of PCP standard would be required to spend approximately $59,000 per year (1,180 megawatts) for energy in order to achieve the no discharge status. Because the no discharge of pentachlorophenol (PCP) standard is not being promulgated, these costs will not be incurred.

Energy requirements for wastewater pollution control for new sources in the wood preserving segment are estimated to be $3,200 per year (64 megawatts or 105 barrels of oil) for a steam plant producing 6,000 cubic feet per day; $3,770 per year (75 megawatts or 124 barrels of oil) for a steaming plant producing 15,000 cubic feet per day; $8,160 per year (163 megawatts or 269 barrels of oil) for a Boulton plant producing 3,200 cubic feet per day; and $16,130 per year (323 megawatts or 531 barrels of oil) for a Boulton Plant producing 8,000 cubic feet per day. The average wood preserving plant has a total operating energy requirement of 15,600 megawatts, or 26,000 barrels of oil per year.

B. Wet Process Hardboard/Insulation Board Segment

1. *Industry Profile.*

Wet process hardboard and insulation board are sheet materials made from wood reduced to lignocellulosic fibers by mechanical or thermomechanical means, i.e., by grinding wood chips under atmospheric pressure or under steam induced pressure, which are then reformed into a solid board. Hardboard is compressed fiberboard, with a density greater then 31 pounds per cubic foot, which is made with either one side (S1S) or both sides smooth (S2S). Insulation board is a noncompressed fiberboard, with a density between 9.5 and 31 pounds per cubic foot. Some hardboard products such as paneling and exterior siding are used in the construction industry while other hardboard products are used in the automotive, furniture and small appliance industries. Insulation board products, which included such things as ceiling tile, sheathing, and insulating board, are used primarily in the construction industry.

There are twenty six plants in the wet process hardboard/insulation board segment. Ten produce insulation board only; of these, 2 are direct dischargers, 5 are indirect, and 3 are nondischargers. Eleven produce hardboard only; of these, 9 are direct dischargers, 1 is indirect, and 1 is a nondischarger. Five plants produce both hardboard and insulation board; of these, 3 are direct dischargers, 1 is indirect and 1 is a nondischarger. Note: Since proposal of these regulations one of the plants which produced insulation board only, and which was a nondischarger, has ceased operation.

Water is essential to wet process hardboard and insulation board manufacturing, serving as the fiber transporting medium during the production process. After the wood chips are reduced to fiber and fiber bundles, water carries the wood to a forming machine, drains through a wire mesh, and either returns to the process water system or is discharged as wastewater.

Pollutants present in process wastewater are mainly water soluble wood constitutents high in BOD and TSS, the result of the leaching of wood constitutents into the process water. Additives used to improve product quality also contribute to the waste load. These may include wax emulsion, paraffin, starch, polyelectrolytes, aluminum sulfate, vegetable oils, ferric sulfate, and thermoplastic and thermosetting resins. Although the wastewater in the two subcategories is similiar, there are more wood constituents in hardboard wastewater because hardboard manufacture requires that the wood chips be reduced to finer fibers. Also, more additives are used in hardboard manufacture.

Data obtained from the sampling and analysis program conducted during the study show that the only toxic pollutants present in raw or treated wastewaters from this segment are very low concentrations of heavy metals such as copper and zinc, and the organics benzene, toluene, and phenol. There is no control technology with the exception of a no discharge technology currently available to reduce further the low concentrations of these pollutants and none of these pollutants are present at levels high enough to interfere with the operation of a POTW, pass through a POTW inadequately treated or limit sludge disposal alternatives.

2. *Previously Applicable Subcategorization Scheme and Effluent Limitations Guidelines and Standards.*

The previously promulgated or proposed effluent guidelines limitations and standards for the hardboard/insulation board segment divided this segment into three subcategories: (1) Wet Process Hardboard (which included both S1S and S2S plants), (2) Insulation Board-Mechanical Refining and (3) Insulation Board-Thermomechanical Refining. The wet process hardboard subcategory was segregated from the insulation board subcategories because wet process hardboard wastewater has a higher raw waste load. Insulation board plants were divided into two subcategories because of the differences in wastewater characteristics between the mechanical and thermomechanical refining processes.

BPT, BAT, NSPS and PSNS for the wet process hardboard subcategory were promulgated April 18, 1974 (39 FR 13942). BPT, BAT and NSPS established numerical limits on BOD, TSS, and pH. PSNS required compliance with general pretreatment standards. PSES for this subcategory was promulgated December 9, 1976 (41 FR 53930) and required compliance with general pretreatment standards. BPT, BAT and NSPS for the wet process hardboard subcategory were withdrawn by the Agency on September 27, 1977, because the Agency was presented with information which indicated the need to revise the subcategorization scheme.

BPT, BAT, NSPS and PSNS for the insulation board subcategory were proposed August 26, 1974 (39 FR 30892) but were never promulgated. BPT, BAT and NSPS proposed numerical limits on BOD, TSS and pH. PSNS required compliance with general pretreatment standards. The PSES for the subcategory was promulgated on December 9, 1976, and required compliance with general pretreatment standards.

3. *Summary of the Proposed Regulation and Changes from the Proposal.*

a. Subcategorization. In the proposed regulation, the Agency changed the subcategorization scheme for the hardboard and insulation board subcategories. With respect to the mechanical and thermomechanical insulation board subcategories, the Agency determined that although the wasteloads from the two pulp preparation processes are slightly different, there is only one mechanical refining plant which is a direct discharger, and this plant has a raw waste load equivalent to the average thermomechanical refining plant. Therefore, the Agency decided for practical reasons to combine these two subcategories into one "Insulation Board" subcategory. With respect to the wet process hardboard subcategory, the Agency found that plants which produce S2S hardboard exhibit significantly greater raw wasteloads than do S1S hardboard plants because S2S hardboard requires finer fibers, which requires more cooking and refining of the wood chips. For this reason, the proposed regulations divided the wet process hardboard subcategory into two parts, S1S Hardboard and S2S Hardboard.

The Agency received no comments objecting to the proposed subcategorization changes. Consequently, the proposed changes in the subcategorization scheme are being adopted in the final regulations.

b. BPT and BCT. Because BPT had been withdrawn in the hardboard subcategory and never promulgated in the insulation board subcategory, it was necessary to designate a BPT treatment level in this round of rulemaking, as a minimum level of control applicable to all direct dischargers and as a baseline against which to compare the costs of achieving the BCT level of control.

For the smooth-one-side (S1S) part of the wet process hardboard subcategory, the Agency proposed a BPT based on the performance of a plant producing only S1S hardboard which demonstrated consistently good removal of the conventional pollutants using a biological treatment system. For the S2S subpart, EPA proposed a limit which could be achieved if the treatment used at the S1S BPT plant were applied to the higher raw waste load at the S2S plant. EPA elected to use this approach because the one direct discharging plant producing S2S hardboard only demonstrated BOD and TSS removal well above that usually associated with BPT. This plant's performance was deemed to be representative of BCT, rather than BPT. Therefore, in the absence of an appropriate model plant for BPT, the Agency chose to extrapolate from the performance of the S1S BPT candidate plant. This approach seemed the most rational, especially in view of the fact that all but one of seven plants producing S2S hardboard currently achieve the BPT limitation so derived.

In setting BCT limits for the S1S and S2S portions of the wet process hardboard subcategory, EPA identified only one treatment and control option capable of providing pollutant removal beyond that required by BPT limitations. This option was to upgrade the existing BPT biological treatment and control technology by providing additional detention time and aeration capacity. Achievement of this control option was demonstrated by the performance of one plant in both the S1S and S2S portions of the wet process hardboard subcategory. Consequently, EPA based its proposed BCT limitations on the performance of these two plants. These proposed BCT limitations passed the BCT "cost reasonableness" test.

For the insulation board subcategory, the Agency proposed BPT limits based on the performance of one of the two direct discharging plants. Although both of these plants performed very well using a combination of biological treatment and recycle of treated effluent as process water, the performance of the thermomechanical plant was chosen as the basis for BPT because all the plants affected by these regulations are thermomechanical plants.

In setting BCT for the insulation board subcategory, the Agency determined that the treatment system upon which the proposed BPT limitations were based was an exemplary system which needed no further upgrading. Consequently, the Agency proposed BCT limitations which equaled the proposed BPT limitations.

The Agency received a number of comments concerning its proposed BPT and BCT limitations. A number of commenters criticized EPA's statistical methodology and argued that EPA had failed to adequately take seasonal variation into account. Others argued that there were problems with the data base and that the data base was inadequate.

EPA has given careful consideration to these comments and has, as a result thereof, altered the proposed BPT and BCT limitations for both the wet process hardboard and insulation board subcategories. In satisfaction of many of the commenters concerns, it has collected a year's worth or more of additional data on treatment system

performance, and revised its statistical methodology in order to account for both seasonality and autocorrelation of the data. It has also reanalyzed all the data using the improved methodology, with the result that daily maximums for the S1S hardboard and insulation board subcategories are approximately the same, daily maximums for the S2S hardboard portion are more restrictive and thirty day limits for both subcategories are more lenient. A detailed discussion of the revised calculations and methodology can be found in the Development Document, Appendix G and at comment 2.

c. BAT. EPA did not propose BAT limits for either the hardboard or insulation board subcategories. This is because review of the information available to the Agency indicated that few toxic pollutants are found in the wastewaters from hardboard and insulation board plants and those that are present occur in such low concentrations that it is not feasible to reduce them by any of the technologies known to EPA. The only technique available to existing plants to reduce these discharge levels would be no discharge of process wastewater pollutants. However, this option is not feasible for these plants for both technical and economical reasons. Most existing plants do not have sufficient land available for land disposal of treated wastewaters. Recycling of treated wastewater by existing plants would probably require redesign of process water and wastewater flow systems. Such redesign would also require the replacement of some existing equipment, and the installation of considerable amounts of new equipment.

The Agency received no objections to its decision not to promulgate a BAT limit for the insulation board and wet process hardboard subcategories. Consequently, no BAT is being promulgated.

d. NSPS. The Agency proposed new source performance standards for both the hardboard and insulation board subcategories which required no discharge of process wastewater pollutants. EPA believed this requirement appropriate primarily because five of the existing twenty-six plants in the two subcategories were achieving no discharge of process wastewater. It therefore considered new sources, which have more flexibility to plan as necessary to achieve no discharge, to be capable of meeting the standard. This proposed no discharge limitation can be achieved by a number of methods, including recycle and reuse of treated wastewater, spray irrigation of excess process wastewater and in-plant controls designed to minimize the wastewater generated. In the absence of significant adverse comment, this standard is being promulgated as proposed.

e. PSNS and PSES. The Agency proposed pretreatment standards for new and existing sources in the hardboard/insulation board segment that do not establish numerical limitations on the introduction of process wastewater to a POTW but rather simply required compliance with the general pretreatment standards (40 CFR Part 403). This is because the process wastewaters generated by the wet process hardboard/insulation board segment of the industry do not contain toxic pollutants at levels sufficient to warrant concern about pass through, sludge contamination or POTW interference and because the conventional pollutants present in these wastewaters, primarily BOD and TSS, are treatable by a POTW. Since there were no comments criticizing this proposal, the promulgated rule makes indirect dischargers subject only to the general pretreatment standards.

4. *Cost and Economic Impact.*

A regulatory analysis was conducted for the hardboard/insulation board segment of the timber industry. The results of that analysis are contained in *Economic Impact Analysis of Alternative Pollution Control Technologies, Wet Process Hardboard and Insulation Board Subcategories of the Timber Products Industry,* EPA 440/2-80-089, December 1980. The results are summarized here.

Direct Discharging Plants—BPT, BCT, BAT, NSPS. Of the 26 plants that produce hardboard or insulation board, 14 are direct dischargers.

Insulation Board.

No BPT regulations have been promulgated previously for the insulation board industry. The promulgated BPT and BCT limits for BOD, TSS and pH are the same. These limits will not result in any increase in costs or economic impacts for insulation board plants because all of the plants currently are meeting the promulgated limits. The Agency is not promulgating BAT regulations for insulation board plants.

Since demand in the insulation board industry is expected to decrease by 5 percent yearly, no new capacity will likely be built. Therefore, no economic impact is expected to result from the promulgated NSPS. In any event, the cost of complying with NSPS is not expected to hinder the addition of new capacity.

Wet Process Hardboard. Three wet process hardboard plants are required to upgrade their wastewater treatment systems to achieve the BPT level of control. Increased detention and aeration time are required for BPT. For two of the plants, total capital investment costs could total $2,290,000 with annualized costs of $758,500. Price changes required for the remaining plants to recover compliance costs may range from 1–14 percent for BPT. The third plant, employing 250–400 people, may close as a result of BPT regulations.

Seven wet process hardboard plants will be required to upgrade their wastewater treatment systems to meet the BCT level of control. The same plant that may close under the BPT regulation may also shut down under the BCT regulation. For six of the plants, total capital investments required to meet BCT could total $10,619,000 above the cost of compliance with BPT, with associated annualized costs of $3,270,300 greater than for BPT.

For five of the six plants, negligible to 14 percent price increases would be required to recover compliance costs due to BCT. The last plant would require a 23 percent price increase to fully recover compliance costs. However, the Agency does not expect price increases of twenty-three percent for this plant because it will likely not attain complete cost pass through. After careful review of the cost pass through analysis for this plant, the Agency concluded that a portion of the costs would probably be passed on to the consumer in the form of higher prices and the remainder would be absorbed from the plants' profits. Plant viability would still be maintained after pollution control costs have been covered. The amount of costs absorbed would not bring the firm below the average profit level for the industry.

The Agency expects decreased profitability in this sector if price increases do not occur, but plants should still be able to cover the cash costs and depreciation. Compliance costs can most likely be recovered by increased prices because affected plants represent 44 percent of capacity and 45 percent of hardboard production (1976 data). Impacts on communities are not likely, except in the case of the closure candidate, where there may be secondary effects.

The Agency is not promulgating BAT regulations for the hardboard industry. Thus, there will be no economic impacts associated with BAT.

Model new plant costs estimates for a hardboard plant are $170,648 per MMSF (⅛") for capital investment and $82,594 per MMSF (⅛") for operating costs. Compliance costs for model plants range

from $7,792 to $16,933 per MMSF (⅛") for total investment costs and $1,398 to $2,722 per MMSF (⅛") for operating costs. The compliance costs associated with NSPS should not hinder the construction of new plants.

The Agency does not expect any new sources in this segment of the industry because market concentration causes significant barriers to entry for new companies. Incremental expansion or conversion from insulation board to hardboard capacity will be cheaper for existing firms than building new plants because capacity can be added in smaller increments.

In conclusion, the Agency does not expect any new firms to enter the industry and does not expect that new source requirements (no discharge of process wastewater pollutants) would affect the rate of new hardboard construction by existing companies.

Indirect Discharging Plants—PSES, PSNS. Because wet process hardboard producing plants and insulation board producing plants discharge primarily conventional pollutants, indirect dischargers are subject only to the general pretreatment requirements specified in 40 CFR Part 403. Therefore, no new treatment is required to meet PSES and PSNS for this sector, and no economic impacts will result.

5. *Nonwater Quality Effects and Effluent Reduction Benefits.*

As noted above, sections 304(b) and 306 of the Clean Water Act require EPA to consider the nonwater quality environmental impacts and energy requirements of effluent guidelines and standards. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation and energy consumption and has obtained approval for the regulations from EPA personnel responsible for non-water quality programs. While it is difficult to balance pollution problems against each other and against energy use, EPA believes this regulation best serves often competing national goals.

a. Air Pollution/Solid Waste. The Agency has identified no adverse effects on air quality which might result from the wastewater treatment required for this segment. These wastewater treatment practices include biological treatment prior to discharge to the navigable waters, disposal on land, or recycle to the board plant.

Similarly, no adverse solid waste impacts are anticipated. As discussed above, toxic pollutants are not present in appreciable amounts in this segment. The promulgated limitations will require a higher degree of biological treatment for as many as seven of the fourteen direct discharging plants in this segment which will in turn increase the generation of biological solids. The characteristics of this sludge are, however, not toxic or believed to be hazardous under the RCRA hazardous waste regulations. Consequently, this sludge will prove amenable to disposal either by recycle to the plant or disposal on land without special handling and disposal requirements.

Presented below are estimates of the total volume of sludge generated currently by the industry and under the BPT limitations and BCT limitations.

Current, 500,000 cubic yards per year.
BPT, 534,000 cubic yards per year.
BCT, 583,000 cubic yards per year.

Note.—These sludge volumes are 1.14 cubic yards per wet ton (15% solids).

b. Energy Requirements. Plants in the S1S portion of the wet process hardboard subcategory will incur energy costs of approximately $129,000 per year (2,580 megawatts or 4,250 barrels of oil) to achieve the BPT limitations. The one plant producing S2S hardboard will incur energy costs of about $1,400,000 per year (28,000 megawatts or 46,000 barrels of oil) to achieve BPT level of control. Five S1S producing plants will incur about $303,000 per year (6,060 megawatts or 10,000 barrels of oil) in energy costs to achieve BCT. Two S2S producing plants will incur about $1,780,000 per year (35,600 megawatts or 58,500 barrels of oil) in energy costs to achieve BCT. The average hardboard/insulation board plant has a total energy requirement of 1,000,000 megawatts, or 1,650,000 barrels of oil per year. The energy requirements associated with BPT limitations are estimated to be about 0.5 percent of a plant's total energy requirements. BCT energy requirements are 0.7 percent. No other plants are expected to incur additional energy costs.

C. Hydraulic Barking

1. *Profile.*

There are approximately 14 plants in the hydraulic barking portion of the barking subcategory. The most recent installation of a hydraulic barking system in the United States occurred in 1969. Apparently energy and environmental considerations make hydraulic barking less attractive to potential customers than mechanical barking, which generates a small amount of easily disposed of wastewater. In addition, the capital cost of installing a hydraulic barking system is estimated to be about one and one-half times the cost of installing a mechanical barking system with the same throughput capacity and capital investment and annual operating costs for hydraulic barking wastewater treatment are significantly higher than the costs of treatment of mechanical barking wastewaters.

2. *Previously Applicable Effluent Limitations and Standards.*

In the previous round of rulemaking (1973–74), EPA established BPT, BAT, NSPS, PSES and PSNS effluent limitations and standards for the hydraulic barking portion of the barking subcategory. The most stringent of these was the BAT limitation, which prohibited the discharge of all process wastewater pollutants. The BAT limitation was based on the performance of a hydraulic barking plant located in northern California. This plant installed a hydraulic barker in 1969 which was designed to operate by recycling 80+ percent of the process water and disposing of the excess water by spray-irrigation. The Agency concluded that after a few years experience with this wastewater treatment and recycle system, a completely closed (no discharge) status could be achieved by all plants. Somewhat less stringent than the BAT limitation were the BPT and NSPS limitations, which established numerical limits on BOD, TSS and pH, and the PSES and PSNS standards, which required compliance with general pretreatment standards.

3. *Summary of the Proposed Regulation and Changes from the Proposal.*

As part of its development of the current guidelines and standards, the Agency surveyed the existing hydraulic barking operations. What it found tended to call into question the appropriateness of a no discharge BAT limitation. First, although most hydraulic barking installations practice some degree of barking water recycle, the plant identified in 1974 as recycling at 80+ percent is still at that level, apparently unable to increase the amount of recycle. Second, analysis of a hydraulic barking system's wastewater revealed the presence of only one toxic pollutant, phenol, at levels above the analytical limits of detection. This analysis suggested that an earlier 1976 analysis, which had revealed the presence of a number of toxic pollutants in hydraulic barking wastewater, may have reflected pollutants from other timber processing operations. On the basis of these discoveries and in recognition of hydraulic barking's limited growth potential, EPA proposed completely withdrawing the existing no discharge BAT limitation. In addition, because it had not collected sufficient information to enable it to calculate the

BCT "cost reasonableness" test, EPA proposed not to establish BCT limitations for the hydraulic barking subcategory.

EPA received no comments concerning its proposed deletion of the existing BAT limitation and decision not to develop BCT limitations. Consequently, it is adopting its proposal in the final regulation.

VII. Pollutants Not Regulated and Subcategories Not Subject to Revised Effluent Limitations Guidelines and Standards

The Settlement Agreement in *NRDC v. Costle, supra,* authorized the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been rewritten in a Modified Settlement Agreement which was approved by the Distric Court for the District of Columbia on March 9, 1979, 12 ERC 1833.

1. *Pollutants Not Regulated.*

In accordance with the terms of this Settlement Agreement, the Agency set out in the preamble to the proposal certain proposed exclusions of toxic pollutants from regulation. Inasmuch as no comments were received concerning these proposed exclusions, the Agency is going forward with these exclusions. These exclusions are summarized below.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by section 304(h) analytical methods or other state-of-the-art methods. Appendix B lists the toxic pollutants not detected and therefore excluded from regulation.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent from a small number of sources and uniquely related to those sources. Appendix C lists the toxic pollutants which were detected in the effluents of only one or two plants, which are uniquely related to these sources, and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants which are detected only in trace amounts and which are not likely to cause toxic effects. Appendix D lists the toxic pollutants detected at or below the nominal limit of analytical detection and quantification and which therefore are excluded from regulation.

2. *Subcategories Not Subject to Revised Effluent Limitations Guidelines and Standards.*

After initially reviewing the established effluent guidelines and standards for the timber industry to determine if revisions were necessary, the Agency concluded that most of the existing subcategories did not require the development of new effluent limitations and standards. Accordingly, pursuant to the terms of paragraph 8 of the Modified Settlement Agreement, the Agency excluded most of these subcategories from further regulation development. No comments were reveived concerning the Agency's action in this regard.

A brief summary of the Agency's reasons for retaining the old limitations and standards for these subscategories is presented below:

a. Veneer, Plywood, Dry Process Hardboard, Log Washing, Sawmills and Planing Mills, Finishing, Particleboard Manufacturing.

The existing BAT and NSPS regulations for these subcategories (and in many cases the existing BPT regulations) require no discharge of process wastewater pollutants. The existing PSES and PSNS regulations require compliance with general pretreatment standards.

The Agency has retained the existing BAT and NSPS regulations for these subcategories because of the existing zero discharge requirement and because of the demonstrated presence of toxic pollutants in these subcategories' wastewaters. The Agency has decided not to develop more stringent pretreatment standards for these subcategories because either the amount of toxic pollutants discharged is low or the number of plants discharging to a POW is small.

b. Wet Storage.

The existing BPT, BAT and NSPS regulations for wet storage facilities require that no debris be discharged and that the pH of wastewaters be kept within the range of 6.0 to 9.0. The existing PSES and PSNS regulations require compliance with general pretreatment standards.

The amount of wastewater discharged by wet storage facilities and the amenability of this discharge to treatment is dependent largely on the amount of precipitation. During dry periods, the industry can achieve no discharge by containing or recycling the effluent. During wet periods, the industry could achieve a level of control more stringent than the existing limitations only by utilizing large containment basins. The size of such basins would vary from plant to plant and the concentrations of pollutants contained in the basin wastewater would be so low as to make treatment difficult.

In view of the dependence of treatment effectiveness on the variable factor of precipitation and the difficulties of designing a treatment system that could handle surges in wastewater, the Agency has concluded that it is not technically feasible to require a level of control beyond that provided for by the existing BAT and NSPS regulations.

c. Wood Furniture and Fixture Production Without Water Wash Spray Booths or Laundry Facilities.

The existing BPT, BAT and NSPS regulations for wood furniture manufacturing facilities without water wash spray booths or laundry facilities require no discharge of process wastewater pollutants. The existing PSES and PSNS require compliance with general pretreatment standards.

In its review of the various timber industry subcategories to determine the need for revised effluent limitations guidelines and standards, the Agency concluded that wood furniture manufacturing did not fall within the purview of the NRDC Consent Decree. Therefore, no consideration was given to developing revised effluent limitations guidelines or standards for either of the wood furniture manufacturing subcategories, except as noted below.

VIII. Technical Amendment

1. *Wood Furniture and Fixture Production with Water Wash Spray Booths or Laundry Facilities.*

The BAT regulation for this subcategory, promulgated in 1975, required no discharge of process wastewater pollutants because five of the twenty-four direct discharging facilities investigated were achieving no discharge and it was felt that by the arrival of the 1984 (then 1983) statutory deadline for BAT, all direct dischargers could achieve no discharge. The NSPS regulation, however, allowed the discharge of process wastewater pollutants because no discharge technology was not considered to be completely proven at the time.

While it was appropriate for NSPS to be less stringent than BAT in 1975, it is clearly inappropriate and anomalous for NSPS to be less stringent than BAT as the BAT statutory deadline approaches. Since no comment has been received protesting the severity of the BAT no discharge limitation, EPA believes and assumes that BAT no discharge technology is presently demonstrated. Consequently, although the Agency

through oversight neglected in the proposal to adjust the NSPS for the above wood furniture subcategory to no discharge, it has rectified this oversight in the final regulation. This modification of the NSPS for the above wood furniture subcategory is considered to be in the nature of a technical or conforming amendment.

IX. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs). EPA intends to develop BMPs which are (1) applicable to all industrial sites; (2) applicable to a designated industrial category; and (3) offer guidance to permit authorities in establishing BMPs required by unique circumstances for a given plant.

This rulemaking does not address BMPs applicable to the wood preserving, hardboard, insulation board, or barking segments, or other segments of the timber products industry. The technical study supporting the regulations presented here was already underway before the passage of the Clean Water Act Amendments of 1977, the law that gives the Agency responsibility for developing BMPs. Rather than delay the publication of the regulations included in this rulemaking, the BMP publication will be postponed. The Agency plans to develop BMP support information in the near future. Areas of interest include: minimizing contamination of precipitation, controlling runoff from raw material storage areas, control of spillage or leaks and sludge disposal.

X. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur because of limitations in even properly operated control equipment. Because technology based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have divided on the question whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle*, supra and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train* 539 F. 2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated Consolidated Permit regulations which include upset and bypass permit provisions (See 40 CFR 122.60, 45 FR 33290 (May 19, 1980)). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology based effluent limitations. The pybass provision authorizes bypassing to prevent loss of life, personal injury or severe property damage. Consequently, although permittees in the timber industry will be entitled to upset and bypass provisions in NPDES permits, these proposed regulations do not address these issues.

XI. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to timber industry direct dischargers. In addition, on promulgation, the pretreatment limitations are directly applicable to indirect dischargers.

For the BPT and BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra.* This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it now will be included in the NPDES regulations and will not be included in the timber or other industry regulations. See the NPDES regulations at 40 CFR 125.30, 44 FR 32854 (June 7, 1979) and 45 FR 33290 (May 19, 1980) amending 125.30(b) for the text and explanation of the "fundamentally different factors" variance.

The BAT limitations in these regulations also are subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutions. According to section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40895 (Sept. 13, 1978). Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW (See 40 CFR 403.7, 403.13).

Pretreatment standards for new sources are subject only to the credits provision in 40 CFR § 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *du Pont* v. *Train, supra.*

XII. Relationship to NPDES Permits

The BPT, BCT and NSPS limitations in these regulations will be applied to individual timber products processing plants through NPDES permits issued by EPA or approved state agencies, under section 402 of the Act. As discussed earlier in the preceeding section of this preamble, these limitations are required to be applied in all federal and state NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue which warrants consideration is the effect of these regulations on the powers of NPDES permit issuing authorities. The promulgation of these regulations does not restrict the power of any permitting authority to act in any manner consistent with law and these or any other EPA regulations, guidelines or policy. For example, the fact that these regulations do not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis when necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by these regulations (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second issue which warrants discussion is monitoring. The Agency

intends to establish a regulation which requires permittees to conduct additional monitoring when they violate their permit limitations. The provisions of such monitoring requirements will be specified for each permittee and may include analysis for some or all of the toxic pollutants or the use of biomonitoring techniques. The additional monitoring will be designed to determine the cause of the violation, necessary corrective measures, and the identity and quantity of toxic pollutants not specifically limited in the permit which are discharged during the violation. Each violation will be evaluated on a case by case basis by the permitting authority to determine whether or not the additional monitoring contained in the permit is necessary. In addition, the Agency intends to amend either these regulations or the General Pretreatment Regulations at 40 CFR Part 403 to require monitoring by indirect discharging plants.

A third topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XIII. Small Business Administration (SBA) Financial Assistance

There are two SBA programs that can be important sources of financing for the Timber Products Processing Industry Point Source Category. They are the SBA's Economic Injury Loan Program and the Pollution Control Financing Bond Guarantees.

Section 8 of the FWPCA amended section 7 of the Small Business Act, 5 U.S.C. 636, to authorize the SBA through its Economic Injury Loan Program to make loans to assist small business concerns in effecting additions to or alterations in equipment, facilities, or methods or operation in order to meet water pollution control requirements under the Federal Water Pollution Control Act if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration. Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the federal government and is currently set at 8¼ percent. Loan repayment periods, depending on the ability of the firm to repay the loan may extend up to thirty years but will not exceed the useful life of the equipment.

Firms in the Timber Products Processing Industry Point Source Category may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA headquarters or in the ten EPA regional offices:

Headquarters—Ms. Frances Desselle, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 426-7874

Region I—Mr. Ted Landry, Enforcement Division, Environmental Protection Agency, J. F. Kennedy Federal Building, Boston, MA 02203, Telephone: (617) 223-5061

Region II—Mr. Gerald DeGartano, Enforcement Division, Room 432, Environmental Protection Agency, 26 Federal Plaza, New York, NY 10007, Telephone: (212) 264-4711

Region III—Mr. Bob Gunter, Environmental Protection Agency, Curtis Building, 3IR20, 6th and Walnut Streets, Philadelphia, PA 19106, Telephone: (215) 597-2564

Region IV—Mr. John Hurlebaus, Grants Administrative Support Section, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30308, Telephone: (404) 881-4491

Region V—Mr. Arnold Leder, Water and Hazardous Material, Enforcement Branch, Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60605, Telephone: (312) 353-2114

Region VI—Ms. Jan Horn, Enforcement Division, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, TX 75270, Telephone: (214) 729-2760

Region VII—Mr. Paul Walker, Water Division, Environmental Protection Agency, 1735 Baltimore Avenue, Kansas City, MO 64108, Telephone: (816) 374-2725

Region VIII—Mr. Gerald Burke, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, CO 80203, Telephone: (303) 327-4579

Region IX—Ms. Linda Powell, Permits Branch, Enforcement Division (E-4), Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 556-3450

Region X—Mr. Danforth Bodien, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, WA 98101, Telephone: (206) 442-1352

Interested persons may also contact the Assistant Regional Administrators for Financial Assistance in the Small Business Administration Regional offices for more details on federal loan assistance programs. For further information, write or telephone any of the following individuals:

Region I—Mr. George H. Allen, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 60 Batterymarch, 10th Floor, Boston, MA 02110, Telephone: (617) 223-3891

Region II—Mr. John Axiotakis, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 26 Federal Plaza, New York, NY 10007, Telephone: (212) 264-1452

Region III—Mr. David Malone, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 231 St. Asaphs Road, West Lobby, Suite 646, Bala Cynwyd, PA 19004, Telephone: (215) 596-5908

Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1375 Peachtree Street, N.E., Atlanta, GA 30367, Telephone: (404) 881-2009

Region V—Mr. Howard Bondruska, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 219 South Dearborn Street, Chicago, IL 60604, Telephone: (312) 353-4534

Region VI—Mr. Till Phillips, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, TX 75202, Telephone: (214) 767-7873

Region VII—Mr. Richard Whitely, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, MO 64016, Telephone: (816) 374-3210

Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1405 Curtis Street, Executive Tower Building, 22nd Floor, Denver, CO 80202, Telephone: (303) 837-3686

Region IX—Mr. Larry J. Wodarski, Deputy Assistant Regional Administrator for Financial Assistance, Small Business Administration, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone: (415) 556-7782

Region X—Mr. Jack Welles, Regional Administrator, Small Business

Administration, 710 2nd Avenue, Dextor Horton Bldg. 5th Floor, Seattle, WA 98104, Telephone: (202) 442-1455

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by Pub. L. 94-305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution facilities when the financing is provided through tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses as defined by the Small Business Administration. Bond financing with SBA's guarantee of the payments makes available long term (20-30 years), low interest (7 percent) financing to small businesses. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn Street, Magazine Bldg., Rosslyn, VA 22209, (703) 235-2900.

Dated: January 7, 1981.

Douglas M. Costle,

Administrator.

(Secs. 301, 304, 306, 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"))

Appendix A—Summary of Public Participation

Numerous agencies and groups have participated during the development of these effluent guidelines and standards. Following the publication of the proposed rules on October 31, 1979 in the Federal Register, the Agency provided the Development Document supporting the proposed rules to industry, government agencies and the public sector for comments. On February 15, 1980, in Washington, D.C., a public hearing was held on the proposed timber pretreatment standards.

The following organizations responded with comments: American Hardboard Association; Abitibi-Price Corporation; American Wood Preservers Institute; American Paper Institute/National Forest Products Association; Southern Wood Piedmont Company; U.S. Department of Commerce; Champion International; National Council of the Paper Industry for Air and Stream Improvement; Council on Wage and Price Stability; and the New Jersey Department of Environmental Protection.

1. *Comment:* Two participants stated that in setting pretreatment standards for the wood preserving steam and Boulton subcategories, the Agency has failed to produce the statutory required showing that PCP passes through, interferes with, or is otherwise incompatible with a POTW. These participants argued that the PCP discharged by wood preserving plants is being reduced through biological activity in POTW, and does not pass through inadequately treated or interfere with the operation of a POTW nor accumulate in POTW sludge in sufficient levels to preclude beneficial use. One participant also stated that the Agency cannot have pretreatment standards based on POTW sludge disposal considerations until guidelines for disposal and use of POTW sludge are established. One of the participants presented influent, effluent and sludge data from three POTW which receive PCP contaminated wastewater from wood preserving plants. Also presented were several literature citations which purport to demonstrate the nonmigration of PCP and the biodegration of PCP in soil, wastewater, and sludge.

Response: The Agency has thoroughly reviewed the information presented by these participants along with other relevant data obtained by the Agency since the proposal. The information accumulated to date by the Agency demonstrates that PCP does indeed pass through POTW inadequately treated and that the percentage removal achieved by POTW is often significantly less than the complete removal achieved by direct discharge BAT or NSPS systems. The data show that significant biodegradation of PCP in POTW does not occur at the low levels of PCP commonly found in POTW influent. This conclusion is supported by data presented to the Agency by one of the industry participants. Recent sampling was conducted at a POTW which exhibits higher than normal influent levels of PCP and which receives PCP wastes from a wood preserving plant. Results of this sampling effort confirmed that although measurable amounts of PCP were being removed, pass through of considerable levels of PCP was also occurring. The Agency does not dispute the validity of the literature references regarding biodegradability and nonmigration of PCP but does dispute the applicability of this data to removal of PCP by POTW. None of the biodegradability experiments described in the literature were conducted under conditions closely simulating the conditions existing at most POTW. Also, the detection limits for PCP analysis were often not reported in the literature references or were greater than the detection limits achievable using the GC/MS analysis employed in collecting the sampling data relied on by the Agency. The literature references, discussed in the document supporting these regulations, thus do not refute the recent physical evidence of PCP pass through. After review of the available information, as well as the comments received on the proposed rules, the Agency concludes that there is sufficient evidence of PCP pass through at POTW to justify a no discharge standard for new and existing sources in the wood preserving segment. The costs associated with eliminating the discharge of PCP from existing indirect discharging plants are, however, too high.

2. *Comment:* Several participants commented on the EPA statistical methodology used to calculate performance variability factors for the insulation board/wet process hardboard segment model treatment systems. The comments can be summarized as follows: (a) the Agency's data base was criticized as being limited in that it contains too few data points to provide more than a rough estimation of long term averages, (b) the Agency's nonparametric statistical methodology is flawed because it assumes the data consists of independent observations, when in fact the data are time and temperature (seasonally) dependent; (c) the Agency incorrectly relied upon the assumption that the monthly means are normally distributed in their analysis of 30-day variability factors, resulting in the BPT and BCT model plants' failure to achieve the proposed limitations at the 99th percentile confidence level; (d) the use of a "moving annual average" is a more appropriate method of developing a standard level of performance for wet process hardboard biological treatment system; (e) 30-day effluent limitations should be derived by fitting the monthly means to a log normal distribution.

Response: As a result of continuing study and review of comments received, the Agency has revised its statistical methodology, resulting in a number of modifications to the variability factors, and hence to the effluent limitations for the insulation board and wet process hardboard subcategories. The objectives of the statistical reevaluation were to: (a) evaluate the effects of autocorrelation ("nonindependence") on the proposed daily and 30-day limitations; (b) evaluate the effects of seasonality and temperature dependence of treated effluent load on the proposed daily and 30-day limitations taking into account the companies' extended data bases, i.e., data provided by the companies covering a time period contiguous to and

later than the original data base used to determine the proposed limitations; (c) develop variability factors and effluent limitations based on statistical techniques which account for both seasonality and autocorrelation of the data, if appropriate. Extended data bases, in most cases representing one year or more of additional treated effluent and production data, were requested from each of the model treatment systems used to determine the proposed effluent limitations for the wet process hardboard and insulation board subcategories. All but one plant provided this requested data. The SIS hardboard BPT model treatment plant did not provide the requested data on the basis that it was unrepresentative of normal treatment system operation because of a 1978 flood which washed out a solids settling lagoon.

Analyses of the extended data bases were then conducted to determine the sensitivity to autocorrelation of the nonparametric statistical method for determining daily variability factors. In deriving the proposed regulations, a nonparametric method of estimating the 99th percentile of the daily treated effluent loadings was used. A nonparametric method does not assume the data fit a specific distribution. This approach was used because goodness-of-fit tests showed that the commonly used normal and log normal distributions did not fit the data well. An autocorrelation analysis confirmed that the daily data are moderately time dependent.

In spite of this observed time dependence, however, an analysis of the effect of dependence on the 99th percentile estimates determined that the nonparametric estimators of the 99th percentile previously used to calculate variability factors are relatively insensitive to autocorrelation of the data. In fact, the previous calculations yielded variability factors which were conservatively high. The effects of seasonality on the daily variability factors are implicit in the nonparametric statistical calculation since they are based on the larger observed treated effluent loads in the two to three year data base. The nonparametric statistical methodology was retained, therefore, for determination of daily variability factors and promulgated effluent limitations. Daily variability factors were recalculated using the extended data bases according to the nonparametric techniques applied originally. The promulgated daily effluent limitations are essentially unchanged, therefore, from the proposed limitation.

The 30-day variability factors used to derive the proposed effluent limitations were calculated using a statistical method known as the Central Limit Theorem.

This theorem assures the approximate normality of the distribution of the monthly means regardless of the form of the distribution of the daily data, assuming that the number of observations comprising the mean is sufficiently large. Sample sizes of 25 to 30 points are usually sufficient to satisfy this assumption, however; as few as 10 to 15 observations may be sufficient, provided the data is not excessively skewed.

The variance of the distribution of monthly measurements, and the proposed limitations were based on the assumption of 30 daily measurements per month. This point was overlooked or misunderstood in the industry comments received which indicated that the model plants were in violation of the standard on the basis of fewer than 10 to 15 data points per month in some instances.

The Agency recognizes, however, that even when the 30-day limitation is adjusted for the actual number of daily measurements comprising the mean, the number of actual monthly values which exceed the proposed limitations is greater than would be expected on the basis of using a 99th percentile estimator. Recognizing that this fact is probably attributable to the seasonality and autocorrelation of the data, a statistical model was developed to account for these effects. The details of this analysis are presented in the Development Document. Revised 30-day variability factors were calculated using the above described model.

A moving average effluent guideline, as suggested by several commenters, was considered by the Agency in its review of the statistical methodology. This approach was rejected, however, because although moving averages do account somewhat for seasonality, they are highly autocorrelated and hence highly dependent. Time series modeling of the data is considered an appropriate statistical technique for accounting for seasonality and autocorrelation in the data. Thus, time series methods were used by the Agency to derive the promulgated regulations for the insulation board/wet process hardboard segment.

The Agency considered the issue of calculating 30-day effluent limitations using a log normal distribution of monthly means. This approach was rejected because the data violate the assumptions necessary to fit a distribution to a set of data, that is, the data are not independent and identically distributed. The data are not independent because of the proven existence of autocorrelation and seasonality. In addition, the monthly means are not identically distributed because different numbers of observations were used to compute the monthly means.

3. *Comment:* A number of commenters stated that the Agency should assess the impact that RCRA regulations will have on the costs of sludge disposal, and factor these costs into its calculation of the economic impacts of the proposed limitations. One of these commenters suggested that, given the shortage of secure hazardous waste disposal facilities and the untested ability of RCRA to compel safe disposal, imposing more stringent effluent guidelines and standards on the timber industry might, by tranferring toxic materials to wastewater treatment sludge, result in a net increase in environmental harm. This participant recommended that EPA take into consideration such solid waste-related environmental effects when promulgating effluent limitations guidelines and standards.

Response: The Agency agrees with the participant's recommendation that EPA should take into account solid waste-related environmental impacts when promulgating effluent limitations and standards. Indeed section 304(b) of the Act specifically requires it to do so. The Agency disagrees, however, with the participant's suggestion that the transfer of toxic materials from wastewater to treatment sludge might result in a net increase in environmental harm. The Agency is confident that the RCRA regulations will insure safe disposal of wood preserving generated hazardous waste and concludes, from this, that the environmental benefits of removing toxic materials from the wood preservers' effluent justify any environmental harm associated with the creation of toxic sludge.

The Agency considered conducting a detailed inquiry into the impact of the RCRA regulations on sludge disposal costs. It does not feel that such a study is warranted in this instance, however, because for most of the regulated subcategories, such a study would not, in the Agency's estimation, influence the ultimate shape of these regulations. The Agency's PSES standards for wood preservers do not differ from the standards previously promulgated and will thus impose no RCRA costs that would not be incurred in the absence of this rulemaking effort. In addition, the hardboard/insulation board subcategories do not appear to generate any waste subject to the RCRA

regulations and will thus not incur any additional RCRA costs as a result of these regulations.

Furthermore, such a study, which might delay promulgation of these regulations by several months, does not appear to the Agency to be compatible with the time constraints imposed by the NRDC consent decree. Moreover, until the final RCRA standards governing treatment, storage, and disposal are promulgated, the Agency will not be in a position to fully and adequately gauge the impact of RCRA on sludge disposal costs.

4. *Comment:* Several commenters argued that the Agency's proposed no discharge of PCP pretreatment standard is tantamount to a prohibition on the discharge of all wood preserving process wastewater for several reasons. First, PCP is used to control sapstain on freshly cut wood and therefore is present in a wood preserving plant's raw material and will be present in the plants effluent regardless of whether or not the plant treats with PCP. Second, PCP can still be detected in wastewater long after the plant discontinues the use of PCP as a preservative or segregates the PCP containing wastewater and treats and disposes of this wastewater separately. Third, PCP will always be present in a wood preserving plants' wastewater because of background levels in the environment. The commenters concluded that the Agency cannot promulgate regulations requiring no discharge of PCP because no discharge of all process wastewater would result in too severe economic consequences.

Response: Inasmuch as the Agency has decided not to promulgate the proposed no discharge standard for PCP, the participants' concern about the effect of a no discharge PCP standard for PSES is speculative. Had the Agency promulgated the proposed standard, however, it believes that it would have had to alter the standard somewhat to accomodate background and residual levels of PCP. In addition, the Agency would have exercised reasonable judgment with respect to those who made a good faith effort to achieve the PCP standard, but were unable to eliminate trace or background levels of PCP.

5. *Comment:* Two commenters argued that in setting a no discharge PSNS standard for Boulton and Steam subcategory wood preserving plants, EPA has mistakenly interpreted the Act to require that PSNS be based on the same considerations as NSPS, thereby ignoring the statutory command that PSNS only be established for pollutants which "may interfere with, pass through, or otherwise be incompatible with" publicly owned treatment works. These commenters further argued that the statutory criteria for the establishment of PSES and PSNS are the same and that therefore the PSNS standard for Boulton and Steam subcategory plants should be no more stringent than the PSES standard.

Response: Contrary to the participants' assertions, EPA has not mistakenly equated NSPS with PSNS. Rather, its PSNS for Boulton and Steam subcategory plants is specifically designed to provide the maximum level of control economically achievable for pollutants which may interfere with, pass through or which are otherwise incompatible with POTWs. These pollutants include PCP, heavy metals and oil and grease. Data in EPA's record shows that PCP and heavy metals pass through publicly owned treatment works. EPA's no discharge PSNS standard insures that no pass through of these substances will occur.

EPA does not believe that PSES and PSNS must always prescribe the same level of control. Although the net goal is the same—to prevent the discharge of pollutants which may interfere with, pass through, or otherwise be incompatible with treatment works—economic considerations often allow new sources to install more effective treatment technology than existing sources. As demonstrated by the present case, new sources have greater flexibility and are often not subject to the retrofitting costs and space limitations which make the installation of no discharge treatment technology economically prohibitive for existing sources. Where this is the case, PSNS can be made more stringent than PSES.

6. *Comment:* One participant stated that the Agency cannot justify pretreatment standards based on POTW sludge disposal considerations until it establishes guidelines for disposal and use of POTW sludge under section 405 of the Clean Water Act.

Response: Although the Agency was concerned with the possibility that PCP is accumulating in POTW sludge, the driving force behind the proposed PSES and PSNS for the Boulton and Steam subcategories of the wood preserving industry was the Agency's concern that PCP is passing through POTW.

7. *Comment:* Several commenters pointed out that, although the previously promulgated regulation excludes rainfall runoff from the definition of process wastewater for the wood preserving segment, the information surveys (data collection portfolios) distributed by the Agency and perhaps the contractor's draft report include such runoff as part of process wastewater. The commenters expressed some concern that the definition of process wastewater, if expanded in the final rules, will result in a substantial additional cost burden on all wood preservers, resulting in additional economic impact.

Response: The final rules promulgated here do not change the definition of process wastewater utilized in the previously promulgated regulations. Excluded from the definition of process wastewater for the wood preserving segment are: cooling water, material storage yard runoff (either raw material or processed wood storage), and boiler blowdown. The definition of process wastewater was expanded in the information surveys (308 letters) so that the Agency would have a complete understanding of the industry.

8. *Comment:* One participant stated that the Agency should establish a numerical limitation on the indirect discharge of polynuclear aromatics (PNAs) and PCP from wood preserving plants instead of inferring that control of Oil and Grease will control the discharge of these toxic compounds. The commenter stated that there is no obvious correlation between removal of Oil and Grease and removal of PNAs and PCP especially if wood preserving plants use technology different than the technology described in the Development Document.

Response: PNAs and PCP are extremely insoluble in water and very soluble in oil and, therefore, any effective oil-water separation technique will reduce the concentrations of these compounds in water. Data contained in the Development Document and the Agency's record demonstrates that effective control of PNAs and PCP is achieved by several oil-water separation techniques including gravity oil-water separation, chemical flocculation, slow-sand filtration, and the application of oil absorbing media. The Agency believes that application of such technology provides reasonable assurance of PNA and PCP control, although a specific level of total PNAs and PCP in the wastewater cannot be guaranteed.

9. *Comment:* One participant noted that even if polynuclear aromatics (PNAs) are controlled to 1 mg/l in wood preserving discharges and are diluted by other wastewaters prior to entering a POTW, water quality violations may result from the presence of PNAs in the POTW effluent.

Response: The Agency recognizes that, depending on the volume and flow of industrial discharge, the volume and flow of the receiving waters, and water quality requirements, the possibility of

water quality violations always exists. However, it considers such an occurrence very unlikely in the case of PNAs discharged from wood preserving plants. In the event wood preserving industry effluents cause the POTW to violate water quality standards for PNAs, then the POTW has the authority under 40 CFR 403 to restrict the discharge of PNAs from these sources so that the standards will not be violated.

10. *Comment:* One participant stated that the United States Department of Agriculture Rebuttable Presumption Against Registration (RPAR) Assessment Team found that the wood preserving industry statistics used in the Development Document and the Economic Impact Analysis Report understated the number of wood preserving plants and the volumes of products produced. The participant felt that EPA's data should be corrected prior to promulgation of final regulations.

Response: The Agency believes that the plant population used to develop information on the wood preserving industry leading to the promulgated regulations includes a cross section of plants in all age and size categories, process variations, and geographical locations. These plants also represent a full range of in-process and end-of-pipe control and treatment technologies. Since the Agency is not promulgating the proposed PSES and is not altering the existing regulations for existing direct dischargers, wood preserving plants identified as a result of the USDA RPAR assessment activities will not be subject to any additional costs as a result of this regulation. The Development Document has been revised to include available information on the additional plants.

11. *Comment:* One participant questioned the validity of data presented in the Development Document which showed that a greater volume of process wastewater was generated by wood preserving plants that treat a significant amount of dry stock than plants that use closed steaming conditioning.

Response: The data presented in the Development Document was provided by the plants in their response to the data collection portfolio; additionally, each of the plants was contacted during a follow-up telephone survey to ensure proper interpretation of the data. The information generated by the telephone survey revealed that many of the plants listed as treating a significant amount of dry stock also treat a considerable amount of green stock by open or modified (semi-closed) steam conditioning which results in the apparent discrepancy.

12. *Comment:* One participant stated that the treatment system at wood preserving plant 593, (Table VII–10 of the Development Document), which was described as being less than the equivalent of BPT treatment technology, is actually representative of a BAT system since it achieves zero discharge.

Response: Table VII–10 of the Development Document presents the results of sampling conducted at plant 593 during the 1975 pretreatment study. At the time of sampling, plant 593 did not have its no discharge spray irrigation system installed, and the plant was not achieving the current BPT limitations for Wood Preserving-Steam plants because of insufficient aeration capacity of the plant's facultative lagoon system. The fact that the plant is currently a nondischarger, a fact duly noted in Table VII–5 of the Development Document, does not invalidate the sampling results obtained during the 1975 pretreatment study.

13. *Comment:* Two participants stated that the Agency has underestimated sludge disposal costs for the wood preserving industry. One of these participants presented documentation of sludge disposal costs for a wood preserving plant that are considerably higher than the costs presented in the Development Document.

Response: Estimates for sludge handling and disposal developed by the Agency are based primarily on information provided by the industry and are believed to be representative of the industry's costs. The possibility exists, however, that an occasional plant will experience sludge handling and disposal costs considerably higher or lower than those predicted in the development document. In any event, the limitations promulgated for wood preserving plants in this regulation will not result in an increase in the amount of sludge generated by existing plants and will only slightly increase the amount of sludge generated by new sources. Any increase in sludge disposal costs resulting directly from these regulations will, therefore, be minimal.

14. *Comment:* Two comments stated that the Agency understated the costs of land, equipment, energy and other components of the total cost of complying with the proposed PSES for the Wood Preserving-Steam and Wood Preserving-Boulton subcategories. One of the commenters presented information demonstrating that individual wood preserving plants experienced higher costs for installation or construction of selected treatment units than those presented in the Development Document. The commenters generally felt that the costs of compliance outweighed the environmental benefits achieved and that the proposed standard would result in a substantial number of plant closures.

Response: The issue of whether the Agency properly estimated the cost of compliance is mooted by the Agency's decision not to promulgate the proposed PSES standard. Nevertheless, after reevaluating the costs presented in support of the proposed standard, the Agency has concluded that the costs presented were correct. The estimated costs of compliance for the wood preserving industry were based on a thorough and carefully conducted cost analysis of treatment technologies applicable to this industry. Actual vendor's quotes for pollution control equipment and conventional engineering design, construction and installation costs were used and updated several times during this analysis. The Agency recognizes that the cost to individual plants for specific treatment units or construction elements may be higher or lower than the Agency's estimate because of regional cost differences and site specific requirements. A factor equal to fifteen percent of the total estimated capital cost was added to each cost estimate to account for this potential variation in costs.

15. *Comment:* One commenter stated that the Agency failed to take into consideration the multiplier effect of the plant closings that the proposed PSES would cause. He stated that this effect, which takes into account the secondary and tertiary consequences of plant closures, indicates that the closures estimated by EPA would result in significantly greater economic consequences than indicated in the Economic Impact Analysis.

Response: Inasmuch as the Agency is not promulgating the proposed PSES standard there is no need to consider the multiplier effects of the plant closings projected to occur as a result of this standard. Moreover, the Agency does not believe that such a potentially unlimited analysis is required by the Act nor does it currently possess the data necessary to perform a quantitative analysis of the secondary and tertiary economic impacts of its regulations. In any event information that the Agency has on hand suggests that the multiplier effects would be minimal. The small plants are the ones that would be subject to potential closure. These closures would not cause a loss of supply for the industry but should instead produce shifts among the

remaining plants to cover the production loss from the small plants. The Agency's information on capacity utilization indicates that any resulting production bottlenecks would not be excessive even in the short run.

16. *Comment:* One participant questioned the statement in the Economic Impact Analysis that the prices of preserved wood products are set by larger wood preserving companies and that inflation eventually will allow for cost recovery. The commenter stated that the larger companies operate on an areawide or national basis and are generally locked into local prices set by the smaller companies. The commenter added that inflation cannot always be relied upon to provide partial environmental cost recovery.

Response: The Agency believes that the commenter's assertion is valid for certain regions of the country. This, however, does not imply that the economic impact of the proposed regulations on the larger wood preserving plants is understated. If prices are set in local markets by the small companies, the large firms are thereby provided a price umbrella because they face proportionately lower costs. This reduces the firms' dependence on inflation for allowing partial cost recovery.

17. *Comment:* A participant argued that the Agency failed to adequately take into account the cumulative economic impact that overlapping air, water and solid waste regulatory requirements would have on the wood preserving industry if the proposed no discharge of PCP pretreatment standards were promulgated. The commenter also felt that the proposed regulations would result in the diversion of PCP from media where it is biodegradable (water) to media where it is not readily degraded (air and sludge).

Response: The Agency has attempted to take into account the full economic impact of the proposed regulations, including the costs attributable to other environmental programs. To the extent that the Agency has not taken into consideration such costs, it has done so because it believed that consideration of such costs would not affect the shape of the final regulations. See response to Comment 3.

The Agency is not aware of any confirmed air pollution problems associated with the application of evaporative technologies to wood preserving wastewater and is conduction a study to determine the possibility of transfer. Although the PSNS standard will undoubtedly result in the transfer of PCP from wastewater to sludge, the Agency does not consider this to be a problem, given that the RCRA regulations will ensure safe disposal of such wastes.

18. *Comment:* One participant supported the proposed no discharge of PCP standard for the indirect discharging portions of the Wood Preserving-Steam and Wood Preserving-Boulton subcategories on the grounds that implementation of this standard would prevent the potential discharge of dioxins, sometimes associated with the preservative PCP.

Response: Approximately 25 percent (39 of 143) of the raw and treated wastewaters from the wood preserving segment were analyzed for 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (TCDD). This dioxin was never detected. No other dioxin compounds were analyzed. The Agency solicits information on the presence of other dioxin compounds in wood preserving wastewater and will be willing to reconsider its action if other dioxins are shown to be present in environmentally significant amounts.

19. *Comment:* One participant expressed the concern that workers in close proximity to wood preserving wastewater evaporation systems may be affected by toxic pollutants transferred from the wastewater to the ambient air. The participant felt that this possibility should be investigated prior to promulgation of a regulation which would require the use of evaporative technology.

Response: At the time of this rulemaking, the majority of wood preserving plants currently achieving a no discharge of process wastewater status are achieving this level with the application of some form of evaporative technology. The Agency is not aware of any ill effects suffered by workers exposed to wood preserving wastewater evaporation systems. Information on this possibility was requested in the Solicitation of comments section of the proposed rules for the timber industry. No information was received, except the concern expressed in this comment. The Agency continues to request information, and will consider all information received.

20. *Comment:* One participant noted that the arsenic concentrations presented in the Development Document for raw and treated effluents from one wood preserving plant appear to be abnormally high and unrepresentative of wood preserving plants which treat with organic preservatives only.

Response: The Agency agrees that the arsenic values reported for this plant are abnormally high and unrepresentative of plants which treat with organic preservatives only. The arsenic concentrations for this plant have been deleted from the average raw and treated effluent calculations presented in Sections V and VII of the Development Document.

21. *Comment:* One participant noted that the oil and grease content of the final effluent from wood preserving plant 499, as presented in Table VII–10 of the Development Document, appears to be abnormally high. This participant requested verification.

Response: Table VII–10 lists plants whose treatment systems represent *less* than the equivalent of BPT treatment technology. The treatment system at plant 499 consisted solely of primary gravity oil-water separation at the time of the sampling; hence the oil and grease concentration listed for this plant is not abnormally high.

22. *Comment:* One participant pointed out that Table VII–45 of the Development Document shows that wood preserving treated effluent has a higher metal concentration than the untreated wastewaters. This participant requested verification.

Response: Table VII–45 presents average raw and treated wasteloads of heavy metals for wood preserving plants with current pretreatment technology in-place. Current pretreatment technology, which consists of gravity oil-water separation followed by chemical flocculation and filtration, is not designed to remove heavy metals from wastewater. Close examination of the data which comprise Table VII–45 reveals remarkable consistency in the raw and treated wasteloads presented, considering the low concentrations at which the heavy metals are present and the small number of data points which make up each average figure reported.

23. *Comment:* One participant argued that, in its estimation of wood preserving pretreatment costs, the Agency improperly assumed that 50 percent of the costs of the wood preserving primary oil-water separation treatment are offset by the value of the oil recovered. The participant stated that the lower quality of the recovered oil was not taken into account.

Response: Although the Agency did not specifically account for the potentially lower quality of the recovered oil in its analysis, a conservative value, which is considerably below the current market value of this commodity, was used. Furthermore, since the Agency has decided not to go forward with the proposed PSES for the Wood Preserving-Boulton and Wood Preserving-Steam subcategories, no incremental compliance costs will be incurred.

24. *Comment:* One reviewer noted that the Agency has allowed the discharge of pentachlorophenol (PCP) for the leather tanning industry, but has proposed pretreatment standards for existing sources of no discharge of PCP in the Wood Preserving-Steam and Wood Preserving-Boulton subcategories of the timber industy, even though total PCP discharge for both industries is comparable. The commenter questioned this apparent inconsistency in controlling a given pollutant across industry categories.

Response: The no discharge limitation for PCP proposed in the timber industry was a technology based standard, already demonstrated in the majority of the wood preserving segment of the timber industry. Similar technology to achieve no discharge of PCP is not available or demonstrated in the leather tanning industry because of significant differences in the wastewater characteristics, particularly flow, of the industries. As discussed in the Development Document and elsewhere in this preamble, the volume of wastewater generated, the characteristics of the wastewater, the availability of technology, and the cost of technology, as well as the industry's or industry segment's ability to absorb those costs are all considerations that enter into the Agency's decision regarding regulatory approaches to a given industry or subcategory. Consequently, the level of control of a specific pollutant may differ considerably from category to category, or even subcategory to subcategory.

25. *Comment:* One participant criticized the Agency's analysis of the cost estimates for the zero discharge technology in the Wood Preserving-Steam indirect discharge subcategory. The commenter stated that the calculation of revenue required to recover cost did not include interest charges and the cost of external financing was not addressed.

Response: The revenue required to recover costs of the installation of pollution control equipment for the Wood Preserving-Steam subcategory did not include interest charges. External financing costs were not taken into account because the Agency felt that a more accurate indication of the regulation's impact would be seen by utilizing internal cash flow financing. Wood preserving companies are generally small and therefore would have limited access to external financing. The 308 financial survey revealed that wood preserving firms do not have debt, are not accessible to equity markets, and have an average capital rate of return equaling 12 percent. External financing for companies with these specifications would require prime lending rates plus 1–2 percent more to account for risk. This amount would be greater than a 12 percent rate of return on capital. This is discussed in the Economic Impact section and Limits of the Analysis section of the *Economic Impact Analysis of Alternative Pollution Control Technologies: Wood Preserving Subcategories of the Timber Product Industry* in more detail.

26. *Comment:* A participant stated that the Agency underestimated the cost of constructing a new wood preserving plant. The participant stated that his company incurred costs significantly greater than the Agency's cost estimate when his company built a wood preserving plant similar to the model plant the Agency used as a basis for its estimate.

Response: The cost estimates for building new wood preserving plants were derived from interviews conducted with a cross-section of the industry. The plants were of varied sizes, locations and product mixes. Average costs for model plant construction were drawn from this representative sample. Variation around the average estimated costs for building new wood preserving plants is expected due to specific conditions in each region. EPA expects that observed costs will vary around the model plant cost estimates, which are in 1977 dollars. If plant construction costs are indeed substantially higher than estimated by EPA, the costs of NSPS and PSNS pollution control will be even less of a hindrance to new source construction than presently expected.

27. *Comment:* One participant stated that the Agency has not adequately addressed the issue of wet process hardboard biological treatment system performance variability and, therefore, has underestimated the cost of complying with the proposed regulations.

Response: The Agency agrees that an error in the statistical methodology used to calculate 30-day variabilities resulted in the inability of wet process hardboard model plants to consistently meet the proposed 30-day effluent limitations. The participants concern appears to be that compliance costs are understated because they are based on design criteria derived from model treatment systems unable to meet the proposed limitations. The Agency has, however, corrected its statistical methodology and is promulgating revised 30-day limitations which are being met by all model plants. Compliance costs, therefore, are not understated with respect to the demonstrated ability of the model plants to comply with the promulgated limitations.

28. *Comment:* Several participants claimed that EPA failed to take into account the effects of geographical location and temperature variations upon treatment system performance in developing effluent limitations for the hardboard and insulation board segment. These participants contended that as a result of the Agency's failure to adequately address this issue, the costs of compliance were understated because they do not account for the costs that plants will be required to incur insulating their treatment systems from the cold. One participant suggested that the Agency promulgate separate limitations for winter and summer seasons as a method of accounting for seasonal temperature variations. One participant requested that the Agency include in the record data previously provided by the participant which demonstrated the effect of temperature shock on one plan's biological system.

Response: The Agency recognizes that temperature variations influence the performance of biological treatment systems. The Agency has taken into account the effects of seasonality and temperature extremes by deriving effluent limitations which are based on the actual performance of biological treatment systems located in geographical areas subject to wide temperature extremes and prolonged periods of freezing or near freezing temperatures.

The promulgated limitations are based on a thorough analysis of all effluent data from each exemplary biological system over a two to three-year period, including periods of temperature shock and seasonal upset. The limitations are statistically derived and represent wasteloads which are not exceeded by the exemplary plants 99 percent of the time, which means that the limitations are based on the highest levels of effluent discharge experienced by the treatment systems in time of stress.

The Agency evaluated all data in the record concerning the effects of temperature shock on biological treatment systems, including the data submitted by the above respondents, and believes that its statistical methodology accounts for all temperature-related upsets which are part of the normal operation of a biologicial treatment system. The Agency considered setting separate limitations for winter and summer seasons. Preliminary evaluation of seasonal limitations indicated that they would result in effluent limitations at least as stringent as the promulgated

limitations. For reasons of administrative and enforcement efficiency, the Agency has elected to establish a single limitation for the entire year.

The exemplary treatment systems, upon whose demonstrated performance the effluent limitations are based, do not require insulation or external heat. The costs of these temperature control items, therefore, are not appropriate elements of compliance costs and have not been included in compliance cost estimates appearing in the Development Document.

29. *Comment:* A comment was made that the Agency failed to consider the effects of raw material wood species, cooking conditions and whole tree chipping operations on raw wasteload variations of the wet process hardboard subcategory.

Response: The Agency thoroughly evaluated all data pertaining to the factors affecting the raw wasteload and determined that insufficent data existed to accurately quantify the effects of wood species variations, cooking conditions or the use of whole tree chips. The data did show, however, that these factors have a very small effect on raw wasteload compared to the type of hardboard produced.

30. *Comment:* One participant questioned the appropriateness of using the performance of an S1S hardboard plant wastewater treatment system as a basis for establishing Best Practical Control Technology (BPT) for the S2S hardboard subcategory.

Response: The Agency used the performance of an S1S hardboard plant wastewater treatment system as a basis for setting BPT because the only plant that produces solely S2S hardboard demonstrates removal capability much higher (94.3 percent removal of BOD and 91.5 percent removal of TSS) than that normally associated with BPT. The Agency's approach is the most rational one available, given the absence of an existing S2S facility meeting the general criteria for the BPT level of control. The reasonableness of this approach is demonstrated by the fact that, of seven plants producing S2S hardboard, all but one plant currently achieve the BPT limitation so derived from the S1S plant.

31. *Comment:* One participant noted that the specific engineering design criteria for BPT S1S plant is essentially the same as the specific design criteria for S1S BCT plant. The participant questioned how BCT effluent limitations could be met if BCT engineering design criteria is presently in use and only BPT effluent limitations are being met.

Response: The above question stems from a fundamental misunderstanding in how the BPT and BCT specific engineering design criteria must be applied. Because there is substantially more BOD to be removed by the BCT system, the BCT aeration basin and aeration horsepower requirements are substantially higher than those of the BPT system. The engineering design criteria for the BCT and BPT settling basins are expressed as a surface overflow rate in the Development Document and are markedly different.

32. *Comment:* One participant questioned the validity of the Agency's assumption that a primary clarifier followed by an activated sludge system would perform as well as the Infilco[R] solids contact units installed at the plant upon which the S2S model BCT system is based. (The Infilco[R] units provide a combination of primary settling and preliminary biological treatment).

Response: The record contains several examples of primary clarifiers followed by activated sludge units which are installed in wet process hardboard and insulation board plants and which perform as well or better than the proprietary Infilco[R] units in question.

33. *Comment:* The Agency received several comments that, because some plants in the hardboard industry have land availability constraints, Best Conventional Pollutant Control (BCT) effluent limitations were not achievable or were not achievable at the cost estimated in the Development Document.

Response: The Agency recognizes the problem of land availability experienced by some plants. There are, however, alternative approaches available to achieve compliance with the BCT limitations which are not land area intensive. These approaches include the use of biological treatment systems which utilize pure oxygen and do not require large aerated lagoons and the application of in-plant controls to reduce the volume of wastewater generated. Several plants have successfully implemented either or a combination of these two approaches in reducing their effluent wasteloads. At least one of these alternatives, in-plant controls to increase the recycle of process water within the plant, has been demonstrated by several wet process hardboard plants to be less costly than the BCT biological treatment system.

34. *Comment:* One participant stated that a new source in the wet process hardboard industry may not always have the ability to choose locations with enough land to accommodate spray irrigation technology and therefore might not be able to achieve the proposed NSPS of no discharge of process wastewater.

Response: The achievement of the proposed no discharge NSPS is not necessarily tied to the installation of any particular technology. If a new source cannot find a site with land suitable for spray irrigation, it can select an alternative method of achieving the new source performance standard, such as recycle. If this is not appropriate it should expand its efforts to find an appropriate plant site.

35. *Comment:* One participant stated that higher board quality requirements, a high percentage of aspen in the plants' raw material and other unique aspects of the production process cause this participant's S2S hardboard mill to exhibit raw wasteloads significantly exceeding those of other S2S producing plants. For this reason, the participant contended that his plant should receive special consideration by the permitting authority.

Response: The Agency has conducted a special study to evaluate the production processes and operating procedures employed at the plant in question. The study did not identify any quantifiable factor or factors that could justify a separate subcategory or regulatory approach appropriate for this plant. Because this plant could not be placed in a different subcategory from the other S2S hardboard producing plants, technology needed by this plant to meet the limitations has been identified, and the plant's costs of installation and operation have been presented. The Agency acknowledges that the costs that must be incurred by this plant in order to achieve the BCT limitations are extremely high. The plant has the opportunity to request consideration of the above listed factors during proceedings for issuance of a NPDES permit. (See 40 CFR 125.30–32).

36. *Comment:* Two participants identified errors in the Development Document concerning the description of the wastewater treatment system at Plant 207, which is the Best Practical Control Technology model plant for the S1S portion of the wet process hardboard subcategory. These participants noted that the size of the aeration basin at the model plant was understated and that consequently the design criteria for the BPT aeration basin, as well as the cost estimates for other facilities to provide the required aeration, were understated.

Response: Errors in the description of the plant have been corrected and the BPT design criteria and associated compliance costs revised accordingly. As a result of these corrections, estimated compliance costs for BPT have increased but the BPT effluent reduction benefits still justify the

compliance costs. The errors identified were the result of incorrect information provided by the PBT model plant in a data collection portfolio response.

37. *Comment:* One participant stated that a major in-plant retrofitting program conducted in 1976 at the S1S hardboard BPT model plant renders the raw wasteload and treated effluent data atypical since the latter half of 1976. This participant further contended that the effluent data for 1976 and 1977 are insufficient to accurately determine long term treated effluent averages or to accurately determine the variability upon which the BPT limitations are based, because the winters of 1976 and 1977 were two of the driest and mildest winters on record.

Response: The Agency thoroughly reviewed the 1976 and 1977 raw and treated effluent data for the BPT model plant. No significant differences were observed for either raw or treated wasteloads during the years 1976 and 1977, in spite of the retrofitting program conducted by the plant. The Agency requested data from the plant for 1978 and 1979 so that an extended data base could be included in the derivation of the S1S BPT effluent limitations. In response to the request for additional data the plant stated 1978 and 1979 data are markedly unrepresentative of normal wastewater treatment system operations primarily because of the effects of a 1978 flood which washed out a solids settling lagoon. The Agency, in the absence of additional data, used the data base available to derive PBT limitations for the S1S hardboard subcategory. The fact that seven out of nine existing S1S subcategory plants currently comply with these PBT limitations is a clear indication of their appropriateness for the S1S subcategory.

38. *Comment:* One participant commented that the capital and operating costs reported in the Development Document for plant 207 to achieve compliance with BCT are not appropriate because of limited land available for treatment system expansion, the periodic cold weather experienced in the region of the plant, and the underestimation of sludge disposal costs for the plant.

Response: The Agency recognizes the problem of land availability experienced by some plants, however there are alternative approaches available to achieve compliance with the BCT limitations which are not land area intensive and which several plants have adopted to reduce their effluent waste loads. At least one of these alternative methods, partial process water recycle has been demonstrated at several S1S hardboard plants to be less costly than the model BCT biological treatment system. The promulgated BCT limitations for S1S wet process hardboard plants are based on demonstrated performance over a three year period of a biological treatment system operating in a climate subject to wide temperature extremes. The system does not require external temperature controls in order to achieve its demonstrated performance. For this reason the cost of temperature controls is not an appropriate element of the costs of compliance reported in the Development Document. The plant has apparently misinterpreted the Agency's definition of the costs of compliance required to achieve BCT. The costs reported are incremental costs above and beyond those costs required to comply with BPT limitations. Since all wet process hardboard plants with BPT biological treatment facilities must already have facilities in-place to handle and dispose of the sludge generated in their treatment systems, the costs of handling and disposing of the relatively small increase in the amount of sludge generated are low compared to existing sludge operating costs. For plant 207, $24,400 (1977 dollars) per year incremental operating costs were estimated as part of the handling and disposal of the incremental sludge.

39. *Comment:* One commenter stated that the laboratory study referenced in the Development Document, which was conducted by EPA–IERL concerning the generation of raw waste loads from hardboard production, does not represent the raw waste load from full scale hardboard plant processes. The commenter indicated that the cooking conditions do not duplicate any plants cooking conditions, and as a result understate BOD generation and overstate yield.

Response: The study referenced in the Development Document was not used to quantify raw waste loads in the hardboard industry. Raw waste generation values presented in the Development Document are based solely on industry supplied untreated effluent data.

40. *Comment:* One participant complimented the Agency on its good judgement in not proposing BAT limitations for the toxic pollutants detected at low levels in treaded effluents of the insulation board and hardboard segment.

Response: The Agency has found that there is no economically feasible treatment technology or economically feasible which is capable of reducing these low levels of pollutants in hardboard and insulation board effluents, Therefore, the Agency did not propose BAT regulations for these pollutants.

41. *Comment:* One reviewer stated that since the Development Document indicates that BPT technology is sufficient to remove toxic pollutants from hardboard wastewaters, the imposition of BCT for this industry segment is unnecessary.

Response: BCT is a level of control for conventional, as opposed to toxic pollutants. Therefore, the fact that a BPT technology might control toxics does not obviate the need for a BCT requirement.

42. *Comment:* One participant questioned the Agency's statement that the differences in sludge generation between Best Practical Technology (BPT) and Best Conventional Technology (BCT) systems for the hardboard industry are negligible. A few participants stated that the sludge disposal costs presented for the hardboard industry were understated.

Response: The increase in sludge generation from BPT to BCT is estimated to be 48,785 cubic yards per year (a 9 percent increase over estimated BPT sludge generation). The cost for handling this additional 9 percent of relatively non-hazardous sludge is small, relative to the total capital and operating cost of achieving the BCT limitation. The sludge disposal costs estimated by the Agency for compliance with BPT and BCT are based on costs reported to the Agency by the plants in response to the data collection portfolio for the hardboard industry.

43. *Comment:* Two participants stated that the *Standard Methods* procedure used for the analysis of total phenols, as applied to insulation board/hardboard wastewaters, can result in a positive response because of the presence of nontoxic natural wood derivatives in the raw wastewater. These participants added that this positive response could occur even in the absence of any specific toxic phenolic substances in the wastewater.

Response: This rulemaking does not include any limitations on total phenols as measured by *Standard Methods.* Nonetheless, the pollutant parameter phenols, as measured by *Standard Methods,* is considered by the Agency to be a significant parameter and may be used as a control parameter in the future.

44. *Comment:* One participant felt that the Agency incorrectly concluded that the use of phenolic thermosetting resin in S1S hardboard manufacture is the sole reason that total phenols, as measured by *Standard Methods,* are observed at higher levels in S1S

hardboard raw wastewater than in S2S hardboard raw wastewater.

Response: The Agency identified the use of phenolic thermosetting resins as one cause of the higher total phenols level in S1S hardboard raw wastewater—not as the sole cause.

45. *Comment:* One participant questioned the validity of the analytical result which reported 10 micrograms per liter of toluene in a hardboard plant's intake water. The participant pointed out that the plant's source of water is a relatively pure mountain stream.

Response: Inasmuch as these regulations place no specific limitation on toluene, this comment is relevant only to the general reliability of the Agency's analytical methods. Toluene was found at 10 μg/1, which is the detection limit for this compound, in the plant's intake water. The Agency recognizes the constraints involved in interpreting data which is reported at, or near, analytical detection limits. The Agency has complied a considerable data base on potable water sources which demonstrates that few surface waters are entirely free of trace organic contaminants.

46. *Comment:* Several comments were received criticizing EPA's BCT methodology. One criticism was that EPA has incorrectly assumed the law mandates the setting of BCT limitations at a level of treatment higher than BPT limitations if the BCT technology passes the cost reasonableness test. A second criticism was that in assessing "effluent reduction benefits," EPA failed to take into consideration the improvement in the quality of the receiving water which will result from application of BCT technology. A third criticism was that EPA's BCT methodology omits consideration of the "reasonableness" of the cost of treatment beyond BPT levels compared to the "benchmark" cost of BPT, as required by section 304(b)(4)(B) of the Act. A fourth criticism was that EPA's BCT methodology improperly bases POTW removal costs on the expected incremental POTW costs of moving beyond secondary treatment instead of on the incremental costs acutally being experienced by POTW—many of which have not yet installed secondary treatment. A final comment was that EPA should develop information enabling it to base its cost reasonableness figure on marginal costs which narrowly straddle secondary treatment, rather than on the marginal costs of moving from secondary to advanced secondary treatment. This commenter noted that EPA admitted in its BCT review of secondary industries that an increment which narrowly straddles secondary treatment would have been preferable in identifying marginal costs, had the data existed.

Response: On August 29, 1979, EPA promulgated BCT limitations for a number of secondary industries and set forth its general BCT methodology (44 FR 50732). The validity of those regulations and the underlying BCT methodology is presently being litigated in the U.S. Court of Appeals for the Fourth Circuit *American Paper Institute, et al.* v. *EPA* (No. 79–1511 et al.). In the course of promulgating these secondary industry BCT limitations, EPA reviewed and fully responded to all of the above criticisms of the BCT methodology. Therefore, no further response to these criticisms is deemed necessary. It should be noted, however, that the commenters have taken out of context EPA's statement that a narrower increment than secondary to advanced secondary treatment would be preferable in identifying the marginal costs of secondary treatment (44 FR 50735). As the preamble clearly states, the approximation of the costs of secondary treatment was only one of a range of reasons for the Agency's selecting the secondary treatment to advanced secondary treatment increment. No new data has been presented which warrants revision of the Agency's methodology nor does the Agency believe it necessary to acquire such data. The issue of whether the Agency's approach satisfies the language and intent of section 304(b)(4)(B) will be addressed in the current litigation.

47. *Comment:* One participant requested additional information regarding the methodology used by the Agency in developing effluent limits for industrial sources. The commenter requested information on: the factors considered in selecting the technologies upon which the standards were based; the extent to which the proposed standards minimize the cost of achieving desired control levels; and the extent to which the proposed level of control for individual toxic substances adequately reflects differences in the degree of toxicity, persistency, etc.

Response: The effluent limitations and standards promulgated here are based on performance of technology determined from a logical progresssion of information collection and evaluation procedures. The wastewaters generated by the industry were characterized in terms of volume, and kinds of pollutants present. The treatment technologies available to reduce these pollutant levels were evaluated. The performance reliability of each of these technology applications was determined. In addition, the costs of installation and operation of these technology options were determined. Concurrently with the evaluation of the technology options, the Agency conducted economic analyses of the industry. The objective of these analyses was to determine the economic/financial viability of various segments of the industry. In particular, these analyses focused on the economic effect of adding various levels of pollution control costs to the annual operating costs of plants or different groups of plants (e.g., large plants, small plants, one product plants, etc). In addition, the Agency evaluated, after wastewater characteristics information became available, the potential effect of the discharge of specific pollutants on receiving water quality. Following the collection of the information discussed above, the Agency evaluated the information and weighed and balanced the technical and economic considerations, as well as considerations of the degree of toxicity and persistence of specific pollutants present. The regulations promulgated here represent, in the Agency's judgment, the most stringent control of toxic pollutants reasonably and economically achievable.

48. *Comment:* One participant suggested that the Agency establish priorities for controlling different toxic pollutants.

Response: The Clean Water Act of 1977 listed sixty-five compounds and classes of compounds as toxic pollutants, without regard the relative toxicity of these compounds. In a sense, the Agency has established priorities among these 65 pollutants and classes of pollutants by singling out 129 specific toxic pollutants for particular study from the potentially thousands of specific pollutants included in the 65. However, within the class of 129 specific pollutants which are the focus of the Agency's rulemaking efforts, the Agency establishes no priorities, nor does it think it wise to do so.

49. *Comment:* Two participants expressed concern over uncertainties in the Agency's toxic pollutant data base. Statements were received that the protocols are inadequate, and that the Agency should provide further information on the precision and accuracy of the methods employed. One commenter stated that to the extent that screening and verification phase data are inaccurate they should not be relied on in proposing these regulations.

Response: The sampling and analytical protocols used and refined throughout the course of this rulemaking program represent state-of-the-art methods. Information concerning these

methods is provided in the Federal Register notice of December 3, 1979 (44 FR 69532) and the thirty-eight documents, data sets and reports referenced in the December 3, 1979 Federal Register notice which the Agency made available to the public in March 1980. These documents include reports on precision and accuracy from fourteen industrial studies, including the timber industry (45 FR 15950, March 12, 1980). The guidelines and standards promulgated here do not establish limits on specific toxic pollutants. Therefore, the precision and accuracy of the analytical methods is not a factor in this rulemaking.

50. *Comment:* Several participants commented that the Agency should carefully consider whether the environmental benefits of the proposed regulations on the timber industry outweigh the economic impacts.

Response: The Agency conducted a thorough economic impact analysis of the regulations on the industry and carefully considered the environmental benefits that would result. For the wood preserving segment, there should be no adverse economic impact associated with the regulations promulgated here. For the hardboard and insulation board segment, the cost of attaining the BCT limitations required by the promulgated regulation is well within the $1.15 per pound "cost reasonableness" yardstick for BOD and TSS removal. One closure candidate in the hardboard segment has been identified.

51. *Comment:* One participant stated that the Agency's rulemaking activities should encourage the introduction of new technologies for the control of toxic, conventional and nonconventional pollutants. The participant requested information on the effect these regulations will have on technological progress.

Response: Although the Agency's rulemaking activities here do not require the application of any particular technology, they are "technology-forcing" in the sense that some plants will be required to install more effective treatment technology to meet the effluent limitations being promulgated. The Agency is normally constrained, however, in the extent which it can "force" the introduction of innovative or novel technology because its effluent limitations and standards must be capable of being achieved by demonstrated technology. Section 301(k) of the Act specifically addresses itself to this matter by empowering the Agency to extend the BAT compliance date for a discharger who proposes to install innovative technology which will enable it to achieve significantly greater effluent reduction than required by BAT or to achieve BAT at a significantly lower cost. The Agency has recently set forth its proposed approach for implementing section 301(k) at 45 FR 62509 (September 19, 1980).

52. *Comment:* Several commenters objected to EPA's "indicator" strategy. These objections were many and varied. A paramount objection was that the Clean Water Act requires EPA to set numerical limitations for specific toxic pollutants and does not permit the use of indicators. A second objection was that EPA has failed to demonstrate that there is a statistically significant correlation between the removal of conventional "indicator" pollutants and the removal of toxic pollutants. Consequently, noted the commenters, the use of conventional pollutants as indicators may result in unnecessarily stringent control of conventional pollutants with no significant corresponding reduction in toxic pollutants. A third objection, along somewhat the same lines, was that use of conventional pollutants as indicators in pretreatment regulations requires treatment of pollutants which are compatible with POTW and thus imposes unnecessary and redundant treatment requirements. A fourth objection was that using conventional pollutants as indicators forces the discharger to choose technology based on the technology's ability to remove indicators rather than toxics, thereby effectively dictating the use of a specific technology and foreclosing the discharger from achieving toxic control by alternative means, such as an internal process changes, which might reduce the toxic pollutants without reducing the conventionals. A fifth objection was that EPA refuses to equate POTW removal of an indicator pollutant with POTW removal of a toxic pollutant for purposes of granting a POTW removal credit, even though EPA designation of a pollutant as an "indicator" necessarily assumes that there is a close correlation between a given technology's ability to remove the indicator and its ability to remove the toxic.

Response: The objections to EPA's "indicator" approach rest on the mistaken assumption that EPA is employing an "indicator" pollutant in the timber industry effluent limitation guidelines. This assumption may be attributable in large part to the Agency's statement in the preamble to the proposed rule that it was retaining the current 100 mg/l Oil and Grease limitation as an "indicator" which would reasonably assure control of polynuclear aromatic compounds (PNAs). Unfortunately, this remark in the preamble was misleading and does not reflect the Agency's final intention. Although the Agency's decision to retain the old 100 mg/l Oil and Grease limitation was influenced by the recognition that Oil and Grease removal results in PNA removal, it is not employing Oil and Grease as a true "indicator" in the final regulation. Violation of the Oil and Grease standard will thus not be held to be a violation of any PNA standard. Similarly, although the Agency's decision to retain the Oil and Grease standard was influenced by the recognition that Oil and Grease removal results in the reduction of pentachlorophenol (PCP) levels, the Agency is not employing Oil and Grease as a true "indicator" for PCP. Consequently, inasmuch as there are no "indicator" pollutants in the final timber industry guidelines, there is no need to respond to the commenters' criticism of EPA's "indicator" approach.

Comment: Two participants expressed concern that the Agency's definition of a new source may be changing. This concern is based on their reviews of the Clean Water Act, the proposed regulations for the timber industry, and the Development Document supporting the proposed regulations.

Response: The definition of new source applicable to these regulations is that found at section 122.3 of the recently promulgated Consolidated Permit Regulations. See 45 FR 33290, 33422. This definition is based on the statutory definition of new source and is the same as that employed in the previously applicable NPDES regulations. The Agency's definition of new source has thus undergone no recent change.

The Agency's attempt to clarify the distinction between construction which constitutes a new source and construction which merely constitutes a modification of an existing facility has, however, undergone recent change. On September 9, 1980 the Agency suspended section 122.66(b) (1) and (2) of its Consolidated Permit Regulations which attempted to distinguish between construction which constitutes a new source and construction which merely constitutes the modification of an existing source. See 45 FR 59317. In its place the Agency proposed a new section 122.66(b) (1) and (2). See 45 FR 59344, September 9, 1980. Further information concerning this proposed change can be obtained by consulting the above cited sections of the Federal

Register and the relevant portions of the Consolidated Permit Regulations.

54. *Comment:* Several participants pointed out what appeared to be inconsistent use of the terms "phenol," "phenols," and "total phenols" in the Development Document.

Response: The Development Document has been revised to eliminate this inconsistency. In all cases, the terms "phenols" and "total phenols" are used to indicate analysis by the *Standard Method* procedure; the term "phenol" is used to indicate the specific chemical compound phenol (C_6H_5OH).

55. *Comment:* One participant pointed out that in January, 1980, EPA proposed that ammonia be designated as a toxic pollutant under section 307(a) of the Clean Water Act. The commenter stated that if ammonia is eventually designated as a toxic pollutant, operators of biological treatment systems will be forced to limit the amount of ammonia added to the treatment system in order to insure that ammonia is not present in the discharge to receiving waters. The commenter concluded that if the addition of ammonia is reduced in this manner the performance, i.e., biological activity, of the treatment system will be reduced, possibly resulting in violation of the BPT or BCT effluent limitations.

Response: EPA has recently withdrawn its proposal to add ammonia to the list of toxic pollutants (See 45 FR 79692, December 1, 1980). This action essentially resolves the participants concerns.

Appendix B—Toxic Pollutants Not Detected in Treated Effluents

Insulation Board and Hardboard

chloromethane
dichlorodifluoromethane
bromomethane
vinyl chloride
chloroethane
methylene chloride
trichlorofluoromethane
1,1-dichloroethylene
1,1-dichloroethane
1,2-trans-dichloroethylene
chloroform
1,2-dichloroethane
1,1,1-trichloroethane
carbon tetrachloride
dichlorobromomethane
bis(chloromethyl) ether
1,2-dichloropropane
2-chloroethyl vinyl ether
bromoform
tetrachloroethylene
1,1,2,2-tetrachloroethane
chlorobenzene
acrolein
acrylonitrile
trichloroethylene
chlorodibromomethane
1,2-dichloropropylene
bis(2-chloroethyl) ether
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
hexachloroethane
bis(2-chloroisopropyl) ether
hexachlorobutadiene
1,2,4-trichlorobenzene
naphthalene
hexachlorocyclopentadiene
nitrobenzene
bis(2-chloroethoxy)methane
2-chloronaphthalene
acenaphthylene
acenaphthene
isophorone
fluorene
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
N-nitrosodiphenylamine
hexachlorobenzene
4-bromophenyl phenyl ether
phenanthrene
anthracene
dimethyl phthalate
diethyl phthalate
fluoranthene
pyrene
di-n-butyl phthalate
benzidine
butyl benzyl phthalate
chrysene
bis(2-ethylhexyl)phthalate
benzo(a)anthracene
3,4-benzofluoranthene
benzo(k)fluoranthene
benzo(a)pyrene
indeno(1,2,3-cd)pyrene
dibenzo(a,h)anthracene
benzo(g h i)perylene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
4-chlorophenyl phenyl ether
3,3'-dichlorobenzidine
2,3,7,8-tetrachlorodibenzo-p-dioxin
2-chlorophenol
2,4-dichlorophenol
2-nitrophenol
parachlorometa cresol
2,4,6-trichlorophenol
2,4-dimethlphenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
4-nitrophenol
pentachlorophenol
aldrin
dieldrin
chlordane (technical mixture and metabolites)
4,4'-DDT
4,4'-DDE (p,p'-DDX)
4,4'-DDD (p,p'-TDE)
a-endosulfan-Alpha
b-endosulfan-Beta
endosulfan sulfate
endrin aldehyde
heptachlor
heptachlor epoxide
a-BHC-Alpha
b-BHC-Beta
r-BHC(lindane)-Gamma
g-BHC-Delta
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
toxaphene

Wood Preserving

chloromethane
dichlorodifluoromethane
bromomethane
vinyl chloride
chloroethane
methylene chloride
trichlorofluoromethane
1,1-dichloroethylene
1,1-dichloroethane
1,2,-trans-dichloroethylene
1,2-dichloroethane
1,1,1-trichloroethane
carbon tetrachloride
dichlorobromomethane
bis-chloromethyl ether
1,2-dichloropropane
1,1,2-trichloroethane
2-chloroethyl vinyl ether
bromoform
tetrachloroethylene
1,1,2,2-tetrachloroethane
chlorobenzene
acrolein
acrylonitrile
trichlorethylene
chlorodibromomethane
1,2-dichloropropylene
bis(2-chloroethyl)ether
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
hexachloroethane
bis(2-chloroisopropyl)ether
hexachlorobutadiene
1,2,4-trichlorobenzene
hexachlorocyclopentadiene
nitrobenzene
bis(2-chloroethoxy)methane
2-chloronaphthalene
isophorone
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
N-nitrosodiphenylamine
hexachlorobenzene
4-bromophenyl phenyl ether
dimethyl phthalate
diethyl phthalate
di-n-butyl phthalate
benzidine
butyl benzyl phthalate
dibenzo(a,h) anthracene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
4-chlorophenyl phenyl ether
3,3'-dichlorobenzidine
2,3,7,8-tetrachlorodibenzo-p-dioxin
2,4-dichlorophenol

2-nitrophenol
parachlorometa cresol
2,4-dinitrophenol
4,6-dinitro-o-cresol
4-nitrophenol
aldrin
dieldrin
Chlordane (technical mixture and metabolites)
4,4'-DDT
4,4'-DDE (p,p'-DDX)
4,4'-DDD (p,p'-TDE)
a-endosulfan-Alpha
b-endosulfan-Beta
endosulfan sulfate
endrin aldehyde
Heptachlor
Heptachlor epoxide
a-BHC-Alpha
b-BHC-Beta
r-BH(lindane)-Gamma
g-BHC-Delta
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
toxaphene

Appendix C—Toxic Pollutants Detected in Treated Effluents at Two Plants or Less

Wood Preserving

chloroform
ethylbenzene
2-chlorophenol
2,4,6-trichlorophenol
2,4-dimethylphenol
beryllium

Insulation Board and Hardboard

benzene
toluene
phenol
beryllium

Appendix D—Toxic Pollutants Detected in Treated Effluents at or Below the Nominal Limit of Detection (10 μg/l)

Insulation Board and Hardboard

lead
arsenic
beryllium
antimony
cadmium
chromium
selenium
silver
thallium
mercury

Wood Preserving

benzene
chloroform
ethylbenzene
2-chlorophenol
2,4,6-trichlorophenol
lead
antimony
selenium
cadmium
silver
thallium
mercury
beryllium

Part 429 of Title 40 is revised to read as follows:

PART 429—TIMBER PRODUCTS PROCESSING POINT SOURCE CATEGORY

General Provisions

Sec.

Subpart A—Barking Subcategory

Subpart B—Veneer Subcategory

Sec.

Subpart C—Plywood Subcategory

Subpart D—Dry Process Hardboard Subcategory

Subpart E—Wet Process Hardboard Subcategory

Subpart F—Wood Preserving—Water Borne or Nonpressure Subcategory

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(a)(b) and (c) and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 United States 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 815, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 429.10 Applicability.

This part applies to any timber products processing operation, and any plant producing insulation board with wood as the major raw material, which discharges or may discharge process wastewater pollutants to the waters of the United States, or which introduces or may introduce process wastewater pollutants into a publicly owned treatment works.

§ 429.11 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) The term "hydraulic barking" means a wood processing operation that removes bark from wood by the use of water under a pressure of 6.8 atm (100 psia) or greater.

(b) The terms "cubic feet" or "cubic meters" of production in Subpart A means the cubic feet or cubic meters of logs from which bark is removed.

(c) The term "process wastewater" specifically excludes noncontact cooling water, material storage yard runoff (either raw material or processed wood storage) and boiler blowdown.

(d) The term "gross production of fiberboard products" means the air dry weight of hardboard or insulation board following formation of the mat and prior to trimming and finishing operations.

(e) The term "hardboard" means a panel manufactured from interfelted ligno-cellulosic fibers consolidated under heat and pressure to a density of 0.5 g/cu cm (31 lb/cu ft) or greater.

(f) The term "insulation board" means a panel manufactured from interfelted ligno-cellulosic fibers consolidated to a density of less than 0.5 g/cu cm (less than 31 lb/cu ft).

(g) The term "smooth-one-side (S1S) hardboard" means hardboard which is produced by the wet-matting, wet-pressing process.

(h) The term "smooth-two-sides (S2S) hardboard" means hardboard which is produced by the wet-matting, dry-pressing process.

(i) The term "debris" means woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1.0 in) diameter round opening and is present in the discharge from a wet storage facility.

(j) For the subcategories for which numerical limitations are given, the daily maximum limitation is a value that should not be exceeded by any one effluent measurement. The 30-day limitation is a value that should not be exceeded by the average of daily measurements taken during any 30-day period.

§ 429.12 Monitoring requirements [Reserved].

Subpart A—Barking Subcategory

§ 429.20 Applicability; description of the barking subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the barking of logs by plants in SIC major group 24, and by plants producing insulation board (SIC group 2661).

§ 429.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to all mechanical barking installations: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for hydraulic barking installations:

Subpart A

Pollutant or pollutant property	BPT effluent limitations: Maximum for any 1 day	BPT effluent limitations: Average of daily values for 30 consecutive days
	Metric units (kilograms per cubic meter of production)	
BOD5	1.5	0.5
TSS	6.9	2.3
pH	(1)	(1)
	English units (pounds per cubic foot of production)	
BOD5	0.09	0.03
TSS	0.431	0.144
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 429.24 New source peformance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) The following limitations apply to all mechanical barking installations: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for hydraulic barking installations:

Subpart A

Pollutant or pollutant property	NSPS effluent limitations: Maximum for any 1 day	NSPS effluent limitations: Average of daily values for 30 consecutive days
	Metric units (kilograms per cubic meter of production)	
BOD5	1.5	0.5
TSS	6.9	2.3
pH	(1)	(1)
	English units (pounds per cubic foot of production)	
BOD5	0.09	0.03
TSS	0.431	0.144
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.25 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.26 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart B—Veneer Subcategory

§ 429.30 Applicability; description of the veneer subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from any plant which manufactures veneer and does not store or hold raw materials in wet storage conditions.

§ 429.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT):

(a) The following limitations constitute the maximum permissible discharge for all veneer manufacturing installations other than those referred to in paragraph (b) and (c) of this section: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for softwood veneer manufacturing processes which use direct steaming for the conditioning of logs:

Subpart B

Pollutant or pollutant property	BPT effluent limitations: Maximum for any 1 day	BPT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per cubic meter of production)	
BOD5	0.72	0.24
pH	(1)	(1)
	English units (pounds per cubic foot of production)	
BOD5	0.045	0.015
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(c) The following limitations constitute the maximum permissible discharge for hardwood veneer manufacturing processes which use direct steaming for the conditioning of logs:

Subpart B

Pollutant or pollutant property	BPT effluent limitations: Maximum for any 1 day	BPT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per cubic meter of production)	
BOD5	1.62	0.54
pH	(1)	(1)
	English units (pounds per cubic foot of production)	
BOD5	0.10	0.034
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.34 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.35 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.36 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart C—Plywood Subcategory

§ 429.40 Applicability; description of the plywood subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from any plywood producing plant that does not store or hold raw materials in wet storage conditions.

§ 429.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of

process wastewater pollutants into navigable waters.

§ 429.44 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.45 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.46 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart D—Dry Process Hardboard Subcategory

§ 429.50 Applicability; description of the dry process hardboard subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from any plant that produces hardboard using the dry matting process for forming the board mat.

§ 429.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.54 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.55 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.56 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart E—Wet Process Hardboard Subcategory

§ 429.60 Applicability; description of the wet process hardboard subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from any plant which produces hardboard products using the wet matting process for forming the board mat.

§ 429.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to plants which produce smooth-one-side (S1S) hardboard:

Subpart E (S1S)

Pollutant or pollutant property	BPT Effluent Limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1000 lb) of gross production	
BOD5	20.5	10.7
TSS	37.3	24.6
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(b) The following limitations apply to plants which produce smooth-two-sides (S2S) hardboard:

Subpart E (S2S)

Pollutant or pollutant property	BPT Effluent Limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	(kg/kkg (lb/1000 lb) of gross production)	
BOD5	32.9	21.4
TSS	54.2	37.1
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) The following limitations apply to plants which produce smooth-one-side (S1S) hardboard:

Subpart E (S1S)

Pollutant or pollutant property	BCT Effluent Limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	(kg/kkg (lb/1000 lb) of gross production)	
BOD5	3.83	2.51
TSS	10.9	7.04
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(b) The following limitations apply to plants which produce smooth-two-sides (S2S) hardboard:

Subpart E (S2S)

Pollutant or pollutant property	BCT Effluent Limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	(kg/kkg (lb/1000 lb) of gross production)	
BOD5	13.2	8.62
TSS	13.9	9.52
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 429.64 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.65 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.66 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart F—Wood Preserving—Water Borne or Nonpressure Subcategory

§ 429.70 Applicability; description of the wood preserving-water borne or nonpressure subcategory.

This subpart applies to discharges and to the introduction of process wastewater pollutants into publicly owned treatment works from all nonpressure wood preserving treatment processes and all pressure wood preserving treatment processes employing water borne inorganic salts.

§ 429.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.74 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.75 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

§ 429.76 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart G—Wood Preserving Steam Subcategory

§ 429.80 Applicability; description of the wood preserving—steam subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from wood preserving processes that use direct steam impingment on wood as the predominant conditioning method; processes that use the vapor drying process as the predominant conditioning method; direct steam conditioning processes which use the same retort to treat with both salt and oil type preservatives; and steam conditioning processes which apply both salt type and oil type preservatives to the same stock.

§ 429.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Subpart G

Pollutant or pollutant property	BPT Effluent Limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	English units (lb/1000 cubic feet of product)	
COD	68.5	34.5
Phenols	.14	.04
Oil and Grease	1.5	.75
pH	(1)	(1)
	Metric units (kg/1000 cu m of product)	
COD	1,100	550
Phenols	2.18	.65
Oil and Grease	24.0	12.0
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

§ 429.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 429.84 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.85 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and meet the following pretreatment standards for existing sources (PSES):

Subpart G

[PSES Effluent Limitations]

Pollutant or pollutant property	Maximum for any 1 day (mg/l)
Oil and grease	100
Copper	5
Chromium	4
Arsenic	4

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance.

Pollutant or pollutant property	Maximum for any 1 day
	Grams per cubic meter of production
Oil and grease	20.5
Copper	.62
Chromium	.41
Arsenic	.41

§ 429.86 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart H—Wood Preserving—Boulton Subcategory

§ 429.90 Applicability; description of the wood preserving—Boulton subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into a publicly owned treatment works from wood preserving operations which use the Boulton process as the predominant method of conditioning stock.

§ 429.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.94 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.95 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and meet the following pretreatment standards for existing sources (PSES):

Subpart H

[PSES Effluent Limitations]

Pollutant or pollutant property	Maximum for any 1 day (mg/l)
Oil and grease	100
Copper	5
Chromium	4
Arsenic	4

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance.

Subpart H

[PSES Effluent Limitations]

Pollutant or pollutant property	Maximum for any 1 day
	grams per cu m of production
Oil and grease	20.5
Copper	.62
Chromium	.41
Arsenic	.41

§ 429.96 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart I—Wet Storage Subcategory

§ 429.100 Applicability; description of the wet storage subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the storage of unprocessed wood, i.e., the storage of logs or roundwood before or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or the storage of logs or roundwood on land during which water is sprayed or deposited intentionally on the logs (wet decking).

§ 429.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0

429.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.104 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.105 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.106 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart J—Log Washing Subcategory

§ 429.110 Applicability; description of the log washing subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the log washing process in which water under pressure is applied to logs for the purpose of removing foreign material from the surface of the log before further processing.

§ 429.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters containing a total suspended solids concentration greater than 50 mg/1 and the pH shall be within the range of 6.0 to 9.0.

§ 429.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.114 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.115 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.116 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart K—Sawmills and Planing Mills Subcategory

§ 429.120 Applicability; description of the sawmills and planing mills subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the timber products processing procedures that include all or part of the following operations: bark removal (other than hydraulic barking as defined in section 429.11 of this part), sawing, resawing, edging, trimming, planing and machining.

§ 429.121 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.122 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.124 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.125 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.126 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart L—Finishing Subcategory

§ 429.130 Applicability; description of the finishing subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the drying, planing, dipping, staining, end coating, moisture proofing,

fabrication, and by-product utilization timber processing operations not otherwise covered by specific guidelines and standards.

§ 429.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.132 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subject must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.134 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.135 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.136 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart M—Particleboard Manufacturing Subcategory

§ 429.140 Applicability; description of the particleboard manufacturing subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from any plant which manufactures particleboard.

§ 429.141 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 429.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.144 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.145 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.146 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduce process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart N—Insulation Board Subcategory

§ 429.150 Applicability; description of the insulation board subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from plants which produce insulation board using wood as the primary raw material. Specifically excluded from this subpart is the manufacture of insulation board from the primary raw material bagasse.

§ 429.151 Effluent limitations representing the degree of effluent reduction attaintable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Subpart N

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1000 lb of gross production)	
BOD5	8.13	4.32
TSS	5.69	2.72
pH		(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.152 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Subpart N

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1000 lb of gross production)	
BOD5	8.13	4.32

Subpart N—Continued

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	5.69	2.72
pH		(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 429.153 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 429.154 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.155 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.156 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into publicly owned treatment works must comply with 40 CFR Part 403.

Subpart O—Wood Furniture and Fixture Production Without Water Wash Spray Booth(s) or Without Laundry Facilities Subcategory

§ 429.160 Applicability; description of the wood furniture and fixture production without water wash spray booth(s) or without laundry facilities subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the manufacture of wood furniture and fixtures at establishments that (a) do not utilize water wash spray booths to collect and contain the overspray from spray applications of finishing materials and (b) do not maintain on-site laundry facilities for fabric utilized in various finishing operations.

§ 429.161 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.162 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [RESERVED]

§ 429.163 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.164 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.165 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.166 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart P—Wood Furniture and Fixture Production With Water Wash Spray Booth(s) or With Laundry Facilities Subcategory

§ 429.170 Applicability; description of the wood furniture and fixture production with water wash spray booth(s) or with laundry facilities subcategory.

This subpart applies to discharges to waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the manufacture of wood furniture and fixtures at establishments that either (a) utilize water wash spray booth(s) to collect and contain the overspray from spray applications of finishing materials, or (b) utilize on-site laundry facilities for fabric utilized in various finishing operations.

§ 429.171 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT): Settleable solids shall be less than or equal to 0.2 ml/l and pH shall be between 6.0 and 9.0 at all times.

§ 429.172 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [RESERVED]

§ 429.173 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants.

§ 429.174 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants.

§ 429.175 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces process wastewater pollutants into a publicly

owned treatment works must comply with 40 CFR Part 403.

§ 429.176 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

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Part VI

Environmental Protection Agency

Requirements for Authorization of State Hazardous Waste Programs

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW FRL 1724-6]

Requirements for Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule and request for comments.

SUMMARY: EPA has previously promulgated regulations establishing requirements for the authorization of State hazardous waste programs under Section 3006(c) of the Resource Conservation and Recovery Act (RCRA), as amended. These regulations were published in the Federal Register on May 19, 1980 (45 FR 33384 et seq.). The regulations provided for two phases of interim authorization, corresponding to the two basic phases in which the underlying Federal program takes effect. The amendments published today are changes in the schedule and related requirements of Phase II of interim authorization. The application and effective dates for final authorization have also been changed. These amendments are necessary to reconcile the interim and final authorization programs with changes in the schedule for promulgation of the underlying Federal program.

DATES:

Effective Date: January 26, 1981.

Comment Date: These amendments are promulgated as interim final rules. The Agency will accept comments on them until March 27, 1981.

ADDRESSES: Comments on the amendments should be sent to Docket Clerk [Docket No. 3006], Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John Skinner, Director, State Programs and Resource Recovery Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-9107.

SUPPLEMENTARY INFORMATION:

I. Background

EPA promulgated regulatory requirements for the authorization of State hazardous waste programs under Section 3006(c) of RCRA on May 19, 1980 (45 FR 33384 et seq.). The preamble to these regulations noted that interim authorization of State programs would be implemented in two phases corresponding to the two basic phases in which the underlying Federal regulations were to be promulgated.

The first set of Federal regulations (on which Phase I of interim authorization is based) became effective on November 19, 1980. These regulations accomplished the initial identification of characteristics of hazardous waste and listing of hazardous wastes (Part 261), established the standards applicable to generators and transporters of hazardous wastes, including the manifest system (Parts 262 and 263), and established "interim status" standards applicable to existing hazardous waste management (HWM) facilities before they receive permits (Part 265). The second set of regulations (on which Phase II of interim authorization would have been based) was then projected to include technical standards for permitting of hazardous waste treatment, storage and disposal facilities (Part 264) and permitting procedures and requirements (Parts 122 and 124).

The preamble to those regulations explained that it would be inconsistent and contrary to Congressional intent to delay interim authorization until all of the Federal program was established. Because of the Congressional mandate that qualified States take formal responsibility for the program as soon as possible, EPA elected to allow interim authorization in phases corresponding to the underlying phases of the Federal program. Further discussion of the rationale for this approach can be found at 45 FR 33386-33387.

The content and timing of Phase II of interim authorization have now been significantly affected by changes in the manner in which the underlying Federal regulations (40 CFR Part 264) are being promulgated. The Agency had expected that the full set of Part 264 technical standards would be promulgated in the fall of 1980, creating the complete set of initial standards governing treatment, storage and disposal facilities. This schedule would have allowed States to apply for all of Phase II interim authorization starting in the fall of 1980 and to administer a full RCRA permit program starting on the effective date of the Part 264 regulations (spring of 1981).

However, the task of producing a full set of complex technical standards for the wide range of HWM facilities has proven to be an extraordinarily difficult and lengthy process. Even with a major commitment of resources from throughout the Agency devoted to the development of these regulations, EPA has come to the conclusion that it is not possible to promulgate all of the Part 264 regulations in final (or interim final) form by the end of 1980. As explained in the Federal Register of January 12, 1981 (46 FR 2801), EPA's initial Part 264 facility standard promulgation includes many of the Subparts of Part 264 in final or interim final form. But certain Subparts of Part 264 will not be initially promulgated until a later date. This includes one of the more important Subparts (Subpart N, Landfills).

Because of this schedule, the Phase II interim authorization program must be modified. It will not be possible to authorize State hazardous waste permit programs for types of facilities for which the necessary Federal facility standards have not yet been promulgated. This situation raises a number of questions concerning the content and timing of Phase II of interim authorization, and the beginning of final authorization, which are addressed in this promulgation and preamble.

II. General Approach to Phase II of Interim Authorization

When it became clear that all of the Federal facility standards would not be promulgated at one time, EPA had two basic options for Phase II authorization of State programs. The first option was to postpone Phase II of interim authorization until the entire set of Federal facility standards is promulgated. Under this approach, States could not have applied for Phase II until the last major Subpart of 40 CFR Part 264, Subparts F through R was promulgated, at which time they could apply for all of Phase II. The commencement of State permitting programs under RCRA would also have been delayed. The second option was to divide Phase II of interim authorization into several "components" and to authorize State permitting programs for specific categories of facilities when the Federal standards for those facilities are promulgated.

EPA has decided to make the Phase II process as flexible as possible within the constraints of RCRA. EPA's basic approach will be to divide Phase II into components and allow States to decide which application strategy they wish to pursue. That is to say, States can either wait until the entire set of Federal standards are promulgated and apply for Phase II at that time or apply for Phase II in components as the Federal standards are promulgated. Each approach has advantages and disadvantages which are discussed below.

The first approach, delayed application, maintains the unified nature of the Phase II application process and is thus more simple administratively. It also provides additional time for States to review the Federal regulations and

develop the necessary statutory, regulatory, and program elements.

However, it results in a Federal permit program in the State until the State receives authorization for the entire Phase II program. Permits can be issued for facilities covered in the first Part 264 standards on the effective date of those standards. Some Federal permitting actions will be necessary for new facilities, given the lack of existing treatment, storage and disposal capacity and the need to establish facilities which satisfy the environmental and human health requirements of the Part 264 standards. Since under this approach a State would not be able to receive interim authorization for its permitting programs for perhaps a year and a half following the first Part 264 promulgations, a direct Federal permitting and enforcement role would exist in the State during this period.

A number of States already have hazardous waste permitting programs developed under State law. The resulting dual Federal-State programs created by this approach would lead to some confusion and duplication of effort, although EPA would attempt to minimize this through the use of cooperative arrangements (see 45 FR 33784).

The second approach, application in components, eliminates some of these problems in that it enables States to apply for Phase II of interim authorization shortly after the initial promulgation of the Part 264 technical facility standards. States can apply for interim authorization of their permitting programs for specific categories of facilities on or shortly after the promulgation of the Federal Part 264 standards which allow the issuance of State RCRA permits to those categories of facilities.[1]

However this approach does complicate the application process for Phase II interim authorization. A revised State application will be necessary for each component, or group of components, of Phase II. The application will be subject to the requirements set forth in Part 123, Subpart F, including EPA review, public participation, and public hearing.

In order to simplify the application process, EPA will announce the effective date and content of each component of Phase II of interim authorization in a Federal Register notice. The notice will list:

- The effective date of the component (i.e., the date on which State authorizations for that component can take effect; this will normally be the effective date of the regulations comprising the component);
- The categories of facilities (e.g., tanks) covered in the component;
- The facility standards under Part 264 covered in the component; and
- The permit requirements and procedures under Parts 122 and 124 covered in the component; currently EPA expects that all of these will be part of the first component.

States will thus be given explicit information concerning what aspects of interim authorization can be applied for with the announcement of each component.

EPA anticipates that there will be three components of Phase II, although subsequent Part 264 promulgations may create a need for additional components. The Phase II application structure produced by these amendments can accommodate such additional components. EPA may combine separate Part 264 promulgations which occur within a few months of each other into one component of Phase II, in order to simplify and reduce the burden of the application process.

Dividing Phase II of interim authorization into components satisfies the Congressional intent for timely State access to authorization. It also reduces the possibility of duplicate permit programs and inefficient use of Federal and State resources.

States will be able to apply for a component of Phase II on or shortly after the promulgation of the underlying Federal standards for that component. States will be able to receive interim authorization for that component within six months (i.e., on the effective date of that component). This should help eliminate the existence of dual Federal and State programs and should reduce the Federal presence in States likely to receive interim authorization for their permit program.

During the time before a State is authorized for a component of Phase II, EPA has the authority for regulation of facilities covered in that component in that State. EPA will work closely with States which appear to be moving in a timely manner toward Phase II interim authorization to reduce any duplication or confusion. The Federal permitting role, especially for existing facilities, will be relatively minor in such States during the short period before the State is authorized.

The general approach to Phase II of interim authorization which EPA has adopted results in a more complex application process and schedule than previously promulgated. EPA has attempted to write the necessary amendments to Part 123 as clearly as possible and to provide additional explanations and examples in this preamble. The appendix to this preamble provides a section-by-section detailed analysis of the amendments, their rationale, and how they will work. In addition, EPA personnel will work closely with State agencies and the public to ensure that the revised process is implemented in an efficient manner.

Today's amendments do not change a large portion of 40 CFR Part 123, Subpart F, but they make changes to many different sections. In order to make Subpart F easier to use, EPA is reprinting it in its entirety, as amended. This reprint includes a recent amendment to § 123.128(f)(2). It also includes an amendment to § 123.128(g), which appears separately in today's **Federal Register.**

III. Interim Final Promulgation

EPA believes that the use of advance notice and comment procedures for these essentially technical amendments to 40 CFR Part 123, Subparts B and F would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. § 553(b)(B)). Delay in promulgating these amendments would cause substantial confusion and disruption of existing programs for States which want to begin the application process for the first components of Phase II. Without these amendments, States, the regulated community and the general public would not know how EPA will handle the authorization of State permitting programs under RCRA now that the Federal regulations which comprise Phase II are being promulgated at different times. In order to allow the State authorization process, which began in November 1980, to continue to proceed in an orderly fashion, EPA is promulgating today's amendments to 40 CFR Part 123, Subparts B and F in interim final form. EPA will accept comments on these amendments for 60 days and will make any further changes deemed necessary as a result of those comments.

IV. Effective Date

RCRA does not specify when EPA's regulations governing the authorization

[1] In a separate action in today's Federal Register, EPA is promulgating Part 267 standards which it will use for a limited time to issue permits to new land disposal facilities. For the reasons explained in the preamble to those standards, EPA will not be using the Part 267 regulations to authorize State permitting programs.

of State programs are to take effect (see Section 3010(b) of RCRA, 42 U.S.C. § 6930(b)). The Administrative Procedure Act (see 5 U.S.C. § 553(d)) requires that the effective date for a regulation be not less than 30 days from the date of publication, unless there is good cause for an earlier date. EPA finds that good cause exists for making these amendments effective upon publication. As discussed above in section III of this preamble, the process of interim authorization of State hazardous waste programs has begun, and is continuing. A delayed effective date for these amendments would confuse and disrupt the ongoing process.

Appendix—Analysis of Amendments

EPA is today amending 40 CFR Part 123, Subpart F (Requirements for Interim Authorization of State Hazardous Waste Programs) to reconcile Phase II of interim authorization with the changes in the schedule for promulgation of the Federal facility standards. The substantive program requirements for Phase II for the most part have not been changed. Also, the basic structure and numbering of Subpart F have not been significantly changed. Rather, these amendments implement needed changes in the schedule and related requirements for Phase II to keep the interim authorization program in correspondence with the underlying Federal program. EPA is also amending 40 CFR Part 123, Subpart B (Additional Requirements for State Hazardous Waste Programs), to adjust the beginning dates of the final authorization program to the changes in the interim authorization program. The major changes and their rationale are discussed below in the narrative for the appropriate sections of Subparts B and F.

Subpart B—Additional Requirements for State Hazardous Waste Programs

Only one paragraph of this Subpart is revised in today's amendments:

§ *123.31 Purpose and scope.*

Paragraph (c) of this section in the May 19 promulgation provided that States could apply for final authorization "at any time after the initial promulgation of Phase II", and that State final authorization programs could take effect on the effective date of Phase II. However, as noted above, the "initial promulgation of Phase II" (i.e., the promulgation of the first Part 264 technical facility standards) did not include all of the underlying Federal standards which State hazardous waste programs will need to address in order to receive final authorization. It will not be possible to grant final authorization to States until the necessary Federal standards have been promulgated and the last component of Phase II of interim authorization is in place.

Therefore, paragraph (c) has been revised to provide that States may apply for final authorization "at any time after the promulgation of the last component of Phase II." This promulgation will complete the job of outlining the requirements for final authorization.[2] Likewise, State final authorization programs can take effect on the effective date of the last component of Phase II. EPA will publish notices in the Federal Register on the promulgation and effective dates of the last component of Phase II, so that States will be aware of the beginning of the final authorization process.

Subpart F—Requirements for Interim Authorization of State Hazardous Waste Programs

A number of sections of Subpart F have been changed to adjust the Phase II interim authorization process. EPA has chosen to print the entire Subpart as revised in today's promulgation, so that readers will have easy access to the current language. This appendix discusses the major changes in each section of Subpart F:

§ *123.121 Purpose and scope.*

Paragraph (b) of this section in the May 19 promulgation explained the general content and application process for the two phases of interim authorization. Because Phase II has been modified by the changes in the underlying Federal regulations, paragraph (b) has been revised to introduce two new paragraphs (c) and (d).

New paragraph (c) states that because the Federal facility standards will be issued in several separate promulgations, "Phase II of interim authorization will be implemented in several components". Each component of Phase II interim authorization will correspond to specified Parts and Subparts of the Federal regulations. For each component, States will be allowed to administer a permit program in lieu of the corresponding Federal permit program.

EPA will describe each component of Phase II in a Federal Register notice which announces that States may apply for interim authorization for the component, provides the effective date of the component, and specifically identifies the elements of the Federal hazardous waste permit program corresponding to the component. This process is described in paragraph (c)(2) of § 123.121.

The Federal Register notices will clearly define the content and timing of each component of Phase II. For example, each notice will list:

- The specific categories of facilities (e.g., tanks, containers, incinerators, landfills) covered by that component;
- The facility standards under 40 CFR Part 264 covered by that component; and
- The permit requirements and procedures under 40 CFR Parts 122 and 124 covered by that component (although EPA expects all of these to be required in the first component).

The notice will also announce the effective date of that component, i.e., the date upon which State program authorizations for that component will take effect.

Paragraph (c)(3) of § 123.121 describes the general effect of State receipt of interim authorization for a component of Phase II. The most important effect is that such a State will be able to issue RCRA permits for the categories of facilities covered in that component. For example, EPA may announce that a component includes permitting standards for containers (based on the Federal standards in Part 264, Subpart I). A State receiving interim authorization for that component will be authorized to issue RCRA permits to facilities handling containers (and to the other facilities covered in that component).

A State will not be able to issue RCRA permits for facilities if the component covering those facilities has not been promulgated. Of course, a State will not be able to issue RCRA permits for facilities if the State does not have interim authorization for the component of Phase II which includes those facilities.

New paragraph (d) of § 123.121 explains how States may apply for the two phases of interim authorization, now that Phase II is made up of at least three components. This paragraph has been included to emphasize the flexibility States have in deciding when to apply for Phase II. Four examples are given of the ways in which States can apply, ranging from sequential application each time an element of interim authorization (e.g., Phase I, a component of Phase II) is promulgated

[2] EPA may allow final authorization to begin, i.e., may announce the promulgation of the last component of Phase II, with one or two Part 264 Subparts unpromulgated. EPA may decide to do this if, for example, the standards for thermal treatment or chemical, physical and biological treatment have not been promulgated when the land disposal standards are promulgated.

to one application covering all of interim authorization submitted after the last component of Phase II is promulgated. Section 123.122 provides the more detailed regulatory framework for the timing of the application process.

§*123.122 Schedule.*

The division of Phase II into components creates a number of changes in the interim authorization schedule as follows:

Duration of interim authorization. In the May 19 preamble, EPA announced that interim authorization would be limited "to 2 years from the effective date of the full initial RCRA program regulations, which includes the Phase II regulations . . .". (For a discussion of this policy in light of RCRA Section 3006(c), see 45 FR 33386–33387.)

This basic approach has been maintained in today's amendments. The "full initial RCRA program regulations" will not take effect until the last major piece of the Federal facility standards (40 CFR Part 264) is in place. Therefore, paragraph (b)(1) of this section provides that the final two-year period for interim authorization begins with the effective date of the last component of Phase II.

Paragraph (c)(1) of this section provides that States may apply for interim authorization at any time prior to the end of the 6th month after the effective date of the last component of Phase II. This schedule is in keeping with the earlier policy of allowing States one year after the promulgation of the "full initial RCRA program regulations" to apply for interim authorization. The deadline for such applications has merely been changed to reflect the delayed promulgation of the last major piece of the Federal facility standards.

Thus, the effective date of the last component of Phase II starts two interim authorization "clocks": interim authorization may extend for two years from that date and States may apply for interim authorization for six months from that date. When the last component of Phase II is effective, EPA will publish a notice in the Federal Register announcing this date and its significance, to provide a clear notification to all concerned parties.

Timing of Phase I application. The May 19 preamble stated that EPA had created an "application window, approximately one year in length" during which a State could apply for interim authorization for Phase I without an accompanying application for Phase II. The preamble noted that this period of time was necessary since "States will have to make quite a few changes in their existing programs to conform them to the substantial equivalence requirement. Letting this year overlap the promulgation date of the Phase II regulations will mean that there will not be any abrupt interruptions in filing and processing of State applications for interim authorization" (45 FR 33387).

The basic concept of a one year Phase I application window, overlapping the promulgation of the Federal facility standards, has been changed in today's amendments, in order to maintain the one year application window for the Phase II components. Paragraph (c)(3) provides that States may apply for Phase I alone until 6 months after the effective date of the first component of Phase II. This date will occur in January 1982. EPA has provided this additional time for States to apply for Phase I alone so that the general approach and the principles of the Phase II application process will apply to States which have not received Phase I authorization as well as to authorized States.

If EPA provided a shorter period of time for Phase I application alone, then unauthorized States would be placed in an unfair position. For example, if a shorter period of time were provided, a State which has been working diligently to make the program changes necessary for Phase I, but was unable to submit a complete Phase I application for another six months or more, would have to apply for the first components of Phase II in addition to Phase I. Such a State would have to begin anew to make the changes required for the first components of Phase II and would have to wait until it made these changes before it could receive Phase I authorization. In effect, the State would not be given the opportunity to decide whether to apply for Phase II sequentially or all at once, since it would have to apply for the first components of Phase II in order to proceed with its application for Phase I. In addition, the State would not necessarily have a year from the announcement of the first components to make necessary program changes and apply for those components, if it accelerated its Phase II application in order to receive Phase I authorization as soon as possible. These constraints would not be faced by States already authorized for Phase I.

To avoid these inequities and to satisfy Congressional intent for timely State authorizations, EPA has decided to extend the time for State applications for Phase I alone. This nineteen month period (May, 1980 to January, 1982) is a reasonable accommodation to State needs for flexibility within the context of the Phase II structure created by these amendments.

Timing of Phase II application. As discussed earlier, States have the option of applying for interim authorization for a component of Phase II once EPA has announced the promulgation of that component. Paragraph (c)(4) provides this authority.

The concept of a one year application window for Phase II provided in the May 19 regulations has been continued in these amendments. However, since Phase II now consists of at least three components, States have been provided a one year application window for each component. The same arguments in favor of this approach for Phase I and Phase II apply to each component of Phase II. Thus, paragraph (c)(5) provides that a State may apply for a component of Phase II without applying for subsequent components of Phase II for one year following the promulgation of that component.

The May 19 regulations required States with interim authorization for Phase I to apply for Phase II by 6 months after the effective date of the Phase II regulations or the Phase I authorization would expire. The rationale for this requirement was to reduce "the time during which States would be operating interim authorization programs that did not correspond to the then effective Federal program, and to keep States moving toward final authorization" (45 FR 33388).

EPA still believes that this approach to Phase II application is reasonable. But the delay in some of the Federal standards upon which Phase II is based requires a modification of this approach. Some States may not wish to apply for Phase II "in pieces," due to the cost and complexity of such an application strategy. These amendments have given such States the flexibility to wait until all of Phase II is promulgated before submitting a Phase II application. Because EPA expects that all components of Phase II will be promulgated within a year, such flexibility does not create serious delays in State progress toward equivalent programs. To require States which have already received Phase I authorization to apply for each component of Phase II within 6 months of its effective date would eliminate this flexibility without serving any beneficial function.

Therefore, today's amendments at paragraph (c)(7) require that States which have received interim authorization for parts of the program (Phase I or Phase I and some components of Phase II) apply for *all* of Phase II within 6 months of the effective date of the last component of Phase II.

Conditions for Phase II Application. Paragraph (d) of this section in the May 19 regulations provided that no State could apply for Phase II unless it was

already authorized for Phase I or was simultaneously applying for both phases. The principle behind this requirement was that the two phases of interim authorization are not independent programs but are segments of the same program which have been developed at slightly different times. One result of this principle is that a State with Phase I authorization must apply for Phase II within a certain time period. In addition, since Phase I established much of the basic structure and requirements of the RCRA hazardous waste management program (e.g., identification of wastes and the manifest system), a State can never be authorized for Phase II alone.

Today's amendments adopt this basic principle and apply to the new Phase II circumstances. Thus, States can never be authorized for one component of Phase II without receiving all earlier components. Paragraph (d)(1) of § 123.122 provides that no State may apply for a component of Phase II unless it (1) has already received authorization for all previously promulgated elements of the program (Phase I and any earlier components of Phase II), or (2) is simultaneously applying for whatever already promulgated elements of the program have not been received along with the component. For example, a State which has received authorization for Phase I only and desires to apply for the second component of Phase II, must apply at the same time for the first component of Phase II in order to bring its program up to date. A State can also choose to amend its program each time a component of Phase II is promulgated and thus move at the same speed and on a parallel track to the unfolding Federal program.

Changes in the Federal Regulations. A second condition for Phase II application is based upon changes in the Federal system. The Federal hazardous waste regulations have been amended in a number of places since their initial promulgation. EPA has been asked how and when States must add these amendments to their applications for interim authorization or to their already authorized programs, so that the State programs remain "substantially equivalent" to the current Federal program.

The most efficient way for States to bring their programs into conformance with the current Federal program is to make the necessary changes whenever they apply for a component of Phase II. States applying for a component will have to modify their program in any case in order to meet the requirements of the component. Adding other Federal regulation changes which have been made as of the date of announcement of the component is not an unreasonable requirement, and moves the State toward final authorization.

Therefore, new paragraph (d)(2) requires States to include in their application for a component of Phase II all program requirements which have been promulgated on or before the date that the component for which they are applying was promulgated. For example, a State applying for the first component of Phase II would have to include in its application all amendments to Phase I requirements which have been promulgated on or before the date the first component was promulgated. In other words, it would have to address all changes to Phase I requirements adopted after May 19, 1980 and through the announcement of the first component of Phase II that EPA deems are necessary for a State program to maintain its substantial equivalence to the Federal program.

Each Federal Register notice which announces a component of Phase II will specifically identify the elements of the Federal program (including amendments to Phase I and previously promulgated Phase II components) which must be included in a State's application for that component.

§§ 123.123 through 123.127 Elements of a program submission.

Most of the amendments to these sections are simple changes in phrases, such as changing "Phase II" to "a component of Phase II". The major effect of this group of amendments is to require that a State applying for a component of Phase II include the applicable requirements for that component in each element of its application (e.g., program description). A State already authorized for Phase I or for earlier components of Phase II must amend each element of its application where necessary to reflect the requirements for the component for which it is applying.

Two of today's changes merit an additional comment:

First, § 123.125(a) requires the State Attorney General or independent legal counsel to certify in the application for a component of Phase II that the enabling legislation for the program for that component (and any other components included in the application) was in existence within 90 days of the promulgation of the regulations comprising the component(s). This requirement carries out one of the basic mandates of RCRA Section 3006(c). The statute requires that, in order to be eligible for interim authorization, a State must have a hazardous waste program in existence pursuant to State law within ninety days after the date of promulgation of regulations under Sections 3002, 3003, 3004 and 3005. EPA interprets this requirement to mean that, as a minimum, a State must have enabling legislation in place. EPA is applying the requirement for State enabling legislation to each major element under RCRA Section 3004 contained in a component. The legislative authority must be in place within 90 days of the promulgation of each set of Federal Phase II regulations, since each component is created by a major § 3004 promulgation. (It should be noted that States must have the authority within 90 days of the regulations' promulgation even if they do not intend to apply for that component until a later date.)

Second, the § 123.127 requirements for State authorization plans have been modified to take into account the existence of components of Phase II. A State applying for a component must address in its authorization plan the portions of the final authorization program that are included in that component (as well as the portions included in Phase I or previous components of Phase II). Since the full set of requirements for final authorization will be known when the last major piece of the Federal program is promulgated, authorization plans submitted with an application for the last component of Phase II must address all additions and modifications necessary for final authorization.

§ 123.128 Program requirements for interim authorization for Phase I.

The only amendment to this section included in this promulgation is directed at State programs authorized for Phase I except for generator, transporter or related manifest requirements. Section 123.128(d) as promulgated on May 19, 1980 allowed States to receive Phase I interim authorization without these requirements if certain conditions were met. Today's amendment provides that a State which has received Phase I authorization under the terms of this paragraph may apply for interim authorization to implement those generator, transporter, or manifest requirements as a part of its application for a Phase II component or "as mutually agreed upon between EPA and the State." EPA's intention is that such States will ordinarily apply for these requirements as a part of a Phase II application. However, in some cases (e.g., where only minor program modifications are necessary for a State to apply for these requirements), EPA

and the State may agree to a separate application covering the Phase I generator, transporter or manifest requirements.

§ 123.129 Additional program requirements for Phase II interim authorization.

The May 19 regulation provided that States applying for Phase II must have facility standards "that provide substantially the same degree of human health and environmental protection" as the Federal Part 264 standards. This basic requirement has been maintained in paragraph (a), with an adjustment to reflect the division of Phase II into components. An application for a component of Phase II must meet this requirement for those facility standards corresponding to that component. Thus, a State applying for the second component of Phase II must have facility standards meeting the above test for all Federal Part 264 standards contained in the second component of Phase II, as specified in the Federal Register notice which announced that component.

The basic requirement that States have a permit program for specified hazardous waste management facilities has not been changed. The only amendment to paragraph (b)(1) has been the addition of language limiting this requirement to the categories of facilities covered in the component of Phase II for which the State is applying.

For example, if standards under Part 264 Subpart J (Containers) are found in the first component, a State applying for the first component must include a permitting requirement for containers in its application. If standards under Subpart N (Landfills), however, are not included in that component (or previous components), the State cannot apply for authorization for permitting landfills. This approach enables States to administer a RCRA permit program for each category of facilities on or shortly after the effective date of the underlying Federal Part 264 standards for that category.

New paragraph (f) of this section addresses State coverage of facilities which would receive a permit by rule under the Federal program. The Federal permit by rule provisions in § 122.26 apply to ocean disposal barges and vessels and certain POTWs and injection wells. Such facilities are deemed to have a RCRA permit if they have specified permits under other EPA programs and if they comply with specified regulations under the Federal hazardous waste program, listed in § 122.26.

State programs applying for any component of Phase II interim authorization must require that facilities covered by Federal permits by rule comply with standards that are at least substantially equivalent to the applicable standards in § 122.26. For example, injection wells must comply with State standards which are at least substantially equivalent to the Federal conditions for injection wells listed at § 122.26(b). Such standards do not have to be imposed through issuance of a State permit, although States may include these facilities in their RCRA permit system. States may also use a permit by rule system. The standards under either approach must be fully enforceable. (States are, of course, free to impose standards which are more stringent than the Federal standards, under § 123.121(i).)

§ 123.135 Approval process.

The amendments to this section make the interim authorization approval process applicable to a State submission for any component of Phase II. Thus, following receipt of a complete program submission for a component, EPA will give the required Federal Register notices, make copies of the submission available to the public and provide for public comment and a public hearing. (The hearing may be cancelled if "significant public interest in a hearing is not expressed.")

EPA expects to issue a revised edition of the RCRA State Interim Authorization Guidance Manual, which will describe in more detail the application and review process. EPA intends to make the application process for components of Phase II as simple as possible within the statutory and regulatory framework. For example, authorized States applying for a component of Phase II need not revise all of their earlier application; rather, amendments need only address the specific additional program elements required for that component (and for any changes in previous parts of the authorization created by modifications in the Federal program, as stated in § 123.122(d)(2)).

§ 123.137 Reversion of State programs.

This section provides for termination of authorized programs that do not meet the requirements of § 123.122(c)(7). Authorized programs must submit an amended submission covering all components of Phase II by 6 months after the effective date of the last component, and that amended submission must meet the requirements of the Federal program, or else the authorized State program then reverts to EPA.

(Sections 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6905, 6912(a), and 6926)

Dated: January 17, 1981.

Douglas M. Costle,

Administrator.

Title 40 CFR Part 123 is amended as follows:

1. The authority citation for Part 123 Subparts B and F reads as follows:

(Sections 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a) and 6926)

2. By revising paragraph (c) of § 123.31 to read as follows:

§ 123.31 Purpose and scope.

* * * * *

(c)(1) States may apply for final authorization at any time after the promulgation of the last component of Phase II.

Note.—EPA will publish a notice in the Federal Register announcing the beginning of the application period for final authorization.

(2) State programs under final authorization shall not take effect until the effective date of the last component of Phase II.

* * * * *

3. By revising Subpart F to read as follows:

Subpart F—Requirements for Interim Authorization of State Hazardous Waste Programs

Sec.

Subpart F—Requirements for Interim Authorization of State Hazardous Waste Programs

§ 123.121 Purpose and scope.

(a) This Subpart specifies all of the requirements a State program must meet in order to obtain interim authorization

under section 3006(c) of RCRA. The requirements a State program must meet in order to obtain final authorization under section 3006(b) of RCRA are specified in Subparts A and B.

(b) Interim authorization of State programs under this Subpart may occur in two phases. The first phase (Phase I) allows States to administer a hazardous waste program in lieu of and corresponding to that portion of the Federal program which covers identification and listing of hazardous waste (40 CFR Part 261), generators (40 CFR Part 262) and transporters (40 CFR Part 263) of hazardous wastes, and establishes preliminary (interim status) standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 265). The second phase (Phase II) allows States to administer a permit program for hazardous waste treatment, storage and disposal facilities in lieu of and corresponding to the Federal hazardous waste permit program (40 CFR Parts 122, 124, and 264), as explained in paragraph (c) of this section.

(c) Because some of the Subparts of the Federal regulations containing standards for hazardous waste treatment, storage, and disposal facilities (40 CFR Part 264) will be promulgated at different times, Phase II of interim authorization will be implemented in several components.

(1) Each component of Phase II of interim authorization will correspond to specified Parts and Subparts of the Federal regulations.

(2) EPA will announce each component of Phase II of interim authorization in a Federal Register notice. The notice will announce that States may apply for interim authorization for one or more components. The notice will also provide the effective date of the component(s) and specifically identify the Parts and Subparts of the Federal regulations comprising the component(s).

(3) States meeting the requirements of this Subpart will be allowed to administer a permit program in lieu of the corresponding Federal hazardous waste permit program for each component for which they have received interim authorization.

(d) States may apply for interim authorization either sequentially or all at once, as long as they adhere to the schedule in § 123.122. For example, States may:

(1) apply for interim authorization for Phase I and amend that application each time a component of Phase II is announced; or

(2) apply for interim authorization for Phase I, wait until the last component of Phase II has been announced, and amend the Phase I application at that time to include all components of Phase II; or

(3) apply at the same time for interim authorization for Phase I and for already announced components of Phase II, and amend that application each time an additional component of Phase II is announced; or

(4) wait until the last component of Phase II has been announced, and apply at the same time for interim authorization for Phase I and for all components of Phase II.

Note.—§ 123.122 provides a more detailed schedule of the interim authorization application process.

(e) The Administrator shall approve a State program which meets the applicable requirements of this Subpart.

(f) Upon approval of a State program for a component of Phase II, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(g) Any State program approved by the Administrator under this Subpart shall at all times be conducted in accordance with this Subpart.

(h) Lack of authority to regulate activities on Indian lands does not impair a State's ability to obtain interim authorization under this Subpart. EPA will administer the program on Indian lands if the State does not seek this authority.

Note.—States are advised to contact the United States Department of Interior, Bureau of Indian Affairs, concerning authority over Indian lands.

(i) Nothing in this Subpart precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Subpart.

(2) Operating a program with a greater scope of coverage than that required under this Subpart. Where an approved program has a greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

§ 123.122 Schedule.

(a) Interim authorization for Phase I shall not take effect until Phase I commences. Interim authorization for each component of Phase II shall not take effect until the effective date of that component.

(b)(1) Interim authorization may extend for a 24-month period from the effective date of the last component of Phase II.

Note.—EPA will publish a notice in the Federal Register announcing the beginning of this 24-month period.

(2) At the end of this period all interim authorizations automatically expire and EPA shall administer the Federal program in any State which has not received final authorization.

(c)(1) A State may apply for interim authorization at any time prior to expiration of the 6th month of the 24-month period beginning with the effective date of the last component of Phase II.

(2) A State applying for interim authorization prior to the announcement of the first component of Phase II shall apply only for interim authorization for Phase I.

(3) A State may apply for interim authorization for Phase I alone (without applying for interim authorization for any component of Phase II) until six months after the effective date of the first component of Phase II.

(4) A State may apply for interim authorization for a component of Phase II upon the announcement of that component, provided that the State meets the requirements of paragraph (d) of this section.

(5) A State may apply for interim authorization for a component of Phase II without applying for interim authorization for subsequent components of Phase II for one year following the announcement of that component, provided that the State meets the requirements of paragraph (d) of this section.

(6) A State applying for interim authorization for a component of Phase II more than one year after the announcement of that component must apply for all components announced more than one year before the date of the application.

(7) A State which has received interim authorization for Phase I (or interim authorization for Phase I and for some but not all of the components of Phase II) shall amend its original submission to include all of the components of Phase II not later than 6 months after the effective date of the last component of Phase II.

(d)(1) No State may apply for interim authorization for a component of Phase II unless it: (i) has received interim authorization for Phase I and for all previous components of Phase II; or (ii) is simultaneously applying for interim authorization for that component of Phase II and for any previously promulgated elements of interim authorization (Phase I and previous components of Phase II) for which the

State has not previously received interim authorization.

(2) A State applying for interim authorization for a component of Phase II shall include in its application all interim authorization program requirements promulgated on or before the date that component of Phase II was promulgated. A State which has received interim authorization for Phase I (or interim authorization for Phase I and for previous components of Phase II) shall amend its original application when applying for a component of Phase II to include all interim authorization program requirements promulgated on or before the date that component of Phase II was announced.

§ 123.123 Elements of a program submission.

(a) States applying for interim authorization shall submit at least three copies of a program submission to EPA containing the following:

(1) A letter from the Governor of the State requesting State program approval;

(2) A complete program description, as required by § 123.124, describing how the State intends to carry out its responsibilities under this subpart;

(3) An Attorney General's statement as required by § 123.125;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 123.126;

(5) An authorization plan as required by § 123.127;

(6) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If a State's submission is found to be complete, EPA's formal review of the proposed State program shall be deemed to have begun on the date of receipt of the State's submission. See § 123.135. If a State's submission is found to be incomplete, formal review shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the formal review period, the formal review period shall recommence upon receipt of the revised submission.

(d) A State simultaneously applying for interim authorization for both Phase I and a component of Phase II shall prepare a single submission.

(e) A State applying for interim authorization for a component of Phase II after receiving interim authorization for Phase I (or for Phase I and previous components of Phase II) shall amend its previous submission for interim authorization as specified in §§ 123.124 to 123.127.

§133.124 Program description.

Any State that wishes to administer a program under this Subpart shall submit to the Regional Administrator a complete description of the program it proposes to administer in lieu of the Federal program under State law. A State applying only for interim authorization for a component of Phase II shall amend its program description for interim authorization for Phase I (or for Phase I and previous components of Phase II) as necessary to reflect the program it proposes to administer to meet the requirements for interim authorization corresponding to the component of Phase II for which the State is applying. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage, and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program including the information listed below. If more than one agency is responsible for administration of the program, each agency must have Statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and one of the agencies must be designated a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. Where the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this section shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will be engaged in carrying out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee engaged in carrying out the State program.

(2) An itemization of the proposed or actual costs of establishing and administering the program, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures, and any State appellate review procedures.

Note.—States applying only for interim authorization for Phase I need describe permitting procedures only to the extent they will be utilized to assure compliance with standards substantially equivalent to 40 CFR Part 265.

(d) Copies of the forms and the manifest format the State intends to use in its program. Forms used by the State need not be identical to the forms used by EPA, but should require the same basic information. If the State chooses to use uniform national forms it should so note.

(e) A complete description of the State's compliance monitoring and enforcement program.

(f) A description of the State manifest system if the State has such a system and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

(1) Generators;

(2) Transporters; and

(3) On- and off-site treatment, storage and disposal facilities including a brief description of the types of facilities and an indication, if applicable, of the permit status of these facilities.

§ 123.125 Attorney General's statement.

(a) Any State seeking to administer a program under this Subpart shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel), that the laws, of the State, or the interstate compact, provide adequate authority to carry out the program described under § 123.124 and to meet the applicable requirements of this Subpart. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. Except as provided in § 123.128(d), the State Attorney General or independent legal counsel must certify that the enabling legislation for the program for Phase I was in existence within 90 days of the promulgation of Phase I. In the case of a State applying for interim authorization for a component of Phase II, the State Attorney General or independent legal counsel must certify that the enabling legislation for the program for that

component was in existence within 90 days of the promulgation of the regulations comprising that component. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be lawfully adopted at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. In the case of a State applying only for interim authorization for a component of Phase II, the Attorney General's statement submitted for interim authorization for Phase I (or for Phase I and previous components of Phase II) shall be amended and recertified to demonstrate adequate authority to carry out all requirements of that component.

(b)(1) In the case of a State applying for interim authorization for Phase I, the Attorney General's statement shall certify that the authorization plan under § 123.127(a), if carried out, would provide the State with enabling authority and regulations adequate to meet the requirements for final authorization contained in Phase I.

(2) In the case of a State applying for interim authorization for a component of Phase II, the Attorney General's statement shall certify that the authorization plan under § 123.127(b), if carried out, would provide the State with enabling authority and regulations adequate to meet all the requirements for final authorization contained in that component of Phase II.

(c) Where a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 123.126 Memorandum of agreement.

(a) The State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA). In addition to meeting the requirements of paragraph (b) of this section, and, if applicable, paragraph (c) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this subpart. No Memorandum of Agreements shall be approved which contains provisions which restrict EPA's statutory oversight responsibility. In the case of a State applying only for interim authorization for a component of Phase II, the Memorandum of Agreement shall be amended and re-executed to include the requirements of paragraph (c) of this section and any necessary revisions to the requirements of paragraph (b) of this section.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of information obtained in notifications made pursuant to section 3010 of RCRA and received by EPA prior to the approval of the State program, EPA identification numbers for new generators, transporters, and treatment, storage, and disposal facilities, and any other information relevant to effective program operation not already in the possession of the State Director (e.g., pending permit applications, compliance reports, etc.).

(2) Provisions specifying the frequency and content of reports, documents, and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports when appropriate.

(3) Provisions on the State's compliance monitoring and enforcing program including:

(i) Provisions for coordination of compliance monitoring activities by the State and EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(5) A provision allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities during interim authorization. The Regional Administrator and the State Director may agree to limitations regarding compliance inspections of generators, transporters, and non-major HWM facilities.

(6) A provision that no limitations on EPA compliance inspection of generators, transporters, and non-major HWM facilities under paragraph (b)(5) of this section shall restrict EPA's right to inspect any HWM facility, generator, or transporter which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(7) A provision delineating respective State and EPA responsibilities during the interim authorization period.

(c) In the case of a State applying for interim authorization for a component of Phase II, the Memorandum of Agreement shall also include the following, as applicable to the component of Phase II for which the State is applying:

(1) Provisions for prompt transfer from EPA to the State of pending permit applications and support files for permit issuance. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications and draft permits that the State Director will send to the Regional Administrator for review and comment. The State Director shall promptly forward to EPA copies of permit applications and draft permits for all major HWM facilities. The Regional Administrator and the State Director may agree to limitations regarding review of and comment on permit applications and draft permits for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(3) Where appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits under different programs, from both EPA and the State.

§ 123.127 Authorization plan.

The State must submit an "authorization plan" which shall describe the additions and modifications necessary for the State program to qualify for final authorization as soon as practicable, but no later than the end of the interim authorization period. This plan shall include the nature of and schedules for any changes in State legislation and regulations; resource levels; actions the State must take to control the complete universe of hazardous waste listed or designated under section 3001 of RCRA as soon as possible; the manifest and permit systems; and the surveillance and enforcement program which will be necessary in order for the State to become eligible for final authorization.

(a)(1) In the case of a State applying only for interim authorization for Phase I, the authorization plan shall describe the additions and modifications

necessary for the State program to meet the requirements for final authorization contained in Phase I.

(2) In the case of a State applying only for interim authorization for a component of Phase II, the authorization plan for Phase I (or for Phase I and previous components of Phase II) shall be amended to meet the requirements of paragraph (b) of this section.

(b)(1) In the case of a State applying for interim authorization for a component of Phase II, the authorization plan shall describe the additions and modifications necessary for the State program to meet the requirements for final authorization corresponding to that component of Phase II and the requirements for final authorization corresponding to Phase I and previous components of Phase II.

(2) In the case of a State applying for interim authorization for the last component of Phase II, the authorization plan shall describe the additions and modifications necessary for the State program to meet all the requirements for final authorization.

§ 123.128 Program requirements for interim authorization for Phase I.

The following requirements are applicable to States applying for interim authorization for Phase I. If a State does not have legislative authority or regulatory control over certain activities that do not occur in the State, the State may be granted interim authorization for Phase I provided the State authorization plan under § 123.127 provides for the development of a complete program as soon as practicable after receiving interim authorization.

(a) *Requirements for identification and listing of hazardous waste.* The State program must control a universe of hazardous wastes generated, transported, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program under 40 CFR Part 261.

(b) *Requirements for generators of hazardous waste.*

(1) This paragraph applies unless the State comes within the exceptions described under paragraph (d) of this section.

(2) The State program must cover all generators of hazardous wastes controlled by the State.

(3) The State shall have the authority to require and shall require all generators covered by the State program to comply with reporting and recordkeeping requirements substantially equivalent to those found at 40 CFR §§ 262.40 and 262.41.

(4) The State program must require that generators who accumulate hazardous wastes for short periods of time prior to shipment do so in a manner that does not present a hazard to human health or the environment.

(5) The State program shall provide requirements respecting international shipments which are substantially equivalent to those at 40 CFR § 262.50, except that advance notification of international shipment, as required by 40 CFR § 262.50(b)(1), shall be filed with the Administrator. The State may require that a copy of such advance notice be filed with the State Director, or may require equivalent reporting procedures.

Note.—Such notices shall be mailed to Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A-107), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(6) The State program must require that such generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are designated for delivery, and, in the case of intrastate shipment, are delivered only to facilities that are authorized to operate under an approved State program or the Federal program.

(7) The State manifest system must require that:

(i) The manifest itself identify the generator, transporter, designated facility to which the hazardous waste will be transported, and the hazardous waste being transported;

(ii) The manifest accompany all wastes offered for transport, except in the case of shipments by rail or water specified in §§ 262.23(c) and 263.20(e); and

(iii) Shipments of hazardous waste that are not delivered to a designated facility are either identified and reported by the generator to the State in which the shipment originated or are independently identified by the State in which the shipment originated.

(8) In the case of interstate shipments for which the manifest has not been returned, the State program must provide for notification to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to EPA in the case of unauthorized States).

(c) *Requirements for transporters of hazardous wastes.*

(1) This paragraph applies unless the State comes within the exceptions described under paragraph (d) of this section.

(2) The State program must cover all transporters of hazardous waste controlled by the State.

(3) The State shall have the authority to require and shall require all transporters covered by the State program to comply with recordkeeping requirements substantially equivalent to those found at 40 CFR § 263.22.

(4) The State program must require such transporters of hazardous waste to use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are delivered only to facilities that are authorized under an approved State program or the Federal program.

(5) The State program must require that transporters carry the manifest with all shipments, except in the case of shipments by rail or water specified in 40 CFR § 263.20(e).

(6) For hazardous wastes that are discharged in transit, the State program must require that transporters notify appropriate State, local, and Federal agencies of the discharges, and clean up the wastes or take action so that the wastes do not present a hazard to human health or the environment. These requirements shall be substantially equivalent to those found at 40 CFR §§ 263.30 and 263.31.

(d) *Limited exceptions from generator, transporter, and related manifest requirements.*

A State applying for interim authorization for Phase I which meets all the requirements for such interim authorization except that it does not have statutory or regulatory authority for the manifest system or other generator or transporter requirements discussed in paragraphs (b) and (c) of this section may be granted interim authorization, if the State authorization plan under § 123.127 delineates the necessary steps for obtaining this authority no later than the end of the interim authorization period under § 123.122(b). A State may apply for interim authorization to implement the manifest system and other generator and transporter requirements if the enabling legislation for that part of the program was in existence within 90 days of the promulgation of Phase I. States which have received interim authorization for Phase I under the terms of this paragraph may apply for interim authorization to implement the manifest system and other generator and transporter requirements as a part of the State's submission for any component of Phase II or as mutually agreed upon between EPA and the State. Until the State manifest system

and other generator and transporter requirements are approved by EPA, all Federal requirements for generators and transporters (including use of the Federal manifest system) shall apply in such States and enforcement responsibility for that part of the program shall remain with the Federal Government. The universe of wastes for which these Federal requirements apply shall be the universe of wastes controlled by the State under paragraph (a) of this section.

(e) *Requirements for hazardous waste treatment, storage, and disposal facilities.*

States must have standards applicable to HWM facilities which are substantially equivalent to 40 CFR Part 265. State law shall prohibit the operation of facilities not in compliance with such standards. These standards shall include:

(1) Preparedness for and prevention of releases of hazardous waste controlled by the State under paragraph (a) of this section and contingency plans and emergency procedures to be followed in the event of a release of such hazardous waste;

(2) Closure and post-closure requirements;

(3) Groundwater monitoring;

(4) Security to prevent unknowing and unauthorized access to the facility;

(5) Facility personnel training;

(6) Inspection, monitoring, recordkeeping, and reporting;

(7) Compliance with the manifest system including the requirement that the facility owner or operator or the State in which the facility is located must return a copy of the manifest to the generator or to the State in which the generator is located indicating delivery of the waste shipment; and

(8) Other facility standards to the extent that they are included in 40 CFR Part 265, except that Subpart R (standards for injection wells) may be included in the State standards, at the State's option.

(f) *Requirements for enforcement authority.*

(1) Any State agency administering a program under this Subpart shall have the following authority to remedy violations of State program requirements:

(i) Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(ii) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including, where appropriate, permit conditions, without the necessity of a prior revocation of the permit; and

(iii) For any program violation, to assess or sue to recover in court civil penalties in at least the amount of $1000 per day to seek criminal fines in at least the amount of $1000 per day.

(2) Any State administering a program under this Subpart shall provide for public participation in the State enforcement process by providing either:

(i) Authority which allows intervention as of right in any civil action to obtain the remedies specified in paragraph (f)(1) (ii) and (iii) of this section by any citizen having an interest which is or may be adversely affected; or

(ii)(A) Assurance by the appropriate State agency that it will investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;

(B) Assurance by the appropriate State enforcement authority that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule, or regulation; and

(C) Assurance by the appropriate State enforcement authority that it will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions, except in cases where a settlement requires some immediate action (e.g., cleanup) which if otherwise delayed could result in substantial damage to either public health or the environment.

(g) *Requirements for compliance evaluation programs.*

(1) A State program under this Subpart shall have procedures for receipt, evaluation, recordkeeping, and investigation for possible enforcement of all required notices and reports.

(2) The State program shall (i) include independent State inspection and surveillance authority to determine compliance or non-compliance with applicable program requirements; or (ii) the State program shall indicate that the State will rely on and act under the inspection authority provided in Section 3007(a) of RCRA.

(3) If the State is relying on independent State inspection and surveillance authority, the authority shall include authority to enter any conveyance, vehicle, facility, or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, obtain samples, monitor or otherwise investigate compliance with the State program. States whose law requires a search warrant prior to entry comply with this requirement.

(4) If the State is relying on the authority in Section 3007(a), the State program must contain assurances that there are no provisions of State law which prevent the State from using that authority.

(5) The State program must include:

(i) The capability to make comprehensive surveys of any activities subject to the State Director's authority in order to identify persons subject to regulation who have failed to comply with program requirements;

(ii) A program for periodic inspections of the activities subject to regulation;

(iii) The capability to investigate evidence of violations of applicable program and permit requirements; and

(iv) Procedures to determine compliance or non-compliance with applicable program requirements including procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(6) Investigatory inspections shall be conducted, samples shall be taken, and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 123.129 Additional program requirements for interim authorization for Phase II.

In addition to the requirements of § 123.128, the following requirements are applicable to States applying for interim authorization for a component of Phase II.

(a) State programs must have standards applicable to hazardous waste management facilities that provide substantially the same degree of human health and environmental protection as the standards promulgated in the Subparts of 40 CFR Part 264 comprising that component.

(b)(1) State programs shall require a permit for owners and operators of those hazardous waste treatment, storage, and disposal facilities:

(i) corresponding to that component;

(ii) which handle any waste controlled by the State under § 123.128(a); and

(iii) for which a permit is required under 40 CFR Part 122.

(2) The State program shall prohibit the operation of such facilities without a permit, provided States may authorize owners and operators of facilities which would qualify for interim status under

the Federal program (if State law so authorizes) to remain in operation pending permit action. Where State law authorizes such continued operation it shall require compliance by owners and operators of such facilities with standards substantially equivalent to EPA's interim status standards under 40 CFR Part 265.

(c) All permits issued by the State under this section shall require compliance with the standards adopted by the State in accordance with paragraph (a) of this section.

(d) State programs shall have requirements for permitting which are substantially equivalent to the provisions listed in §§ 123.7 (a) and (b).

(e) A State with interim authorization for a component of Phase II may not issue permits pursuant to that component with a term greater than ten years.

(f) State programs shall require that a facility which, under the Federal hazardous waste management program, would be deemed to have a Federal permit if the conditions established in § 122.26 of this chapter are met, comply with standards at least substantially equivalent to the applicable standards in § 122.26 of this chapter. Such standards need not be imposed through issuance of a permit, but must be fully enforceable.

§ 123.130 Interstate movement of hazardous waste.

(a) If a waste is transported from a State where it is listed or designated as hazardous under the program applicable in that State, whether that is the Federal program or an approved State program, into a State with interim authorization where it is not listed or designated, the waste must be manifested in accordance with the laws of the State where the waste was generated and must be treated, stored, or disposed of as required by the laws of the State into which it has been transported.

(b) If a waste is transported from a State with interim authorization where it is not listed or designated as hazardous into a State where it is listed or designated as hazardous under the program applicable in that State, whether that is the Federal program or an approved State program, the waste must be treated, stored, or disposed of in accordance with the law applicable in the State into which it has been transported.

(c) In all cases of interstate movement of hazardous waste, as defined by 40 CFR Part 261, generators and transporters must meet DOT requirements in 49 CFR Parts 172, 173, 178, and 179 (e.g., for shipping paper, packaging, labeling, marking, and placarding).

§ 123.131 Progress reports.

The State Director shall submit a semi-annual progress report to the EPA Regional Administrator within 4 weeks of the date 6 months after Phase I commences, and at 6-month intervals thereafter until the expiration of interim authorization. The reports shall briefly summarize, in a manner and form prescribed by the Regional Administrator, the State's compliance in meeting the requirements of the authorization plan, the reasons and proposed remedies for any delay in meeting milestones, and the anticipated problems and solutions for the next reporting period.

§ 123.132 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this Subpart. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs in order to implement its approved programs. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs in order to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 123.133 Coordination with other programs.

(a) Issuance of State permits under this Part may be coordinated, or provided in Part 124, with issuance of NPDES, 404, and UIC permits whether they are controlled by the State, EPA, or the Corps of Engineers.

(b) The State Director of any approved program which may affect the planning for and development of hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA (40 CFR Part 255) as responsible for the development and implementation of State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 123.134 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits as provided in the Memorandum of Agreement under § 123.126.

(b) Where EPA indicates, in a comment, that issuance of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

(1) A statement of the reasons for the comment (including the section of RCRA or regulations promulgated thereunder that support the comment); and

(2) The actions that should be taken by the State Director in order to address the comments (including the conditions which the permit would include if it were issued by the Regional Administrator).

(c) A copy of any comment shall be sent to the permit applicant by the Regional Administrator.

(d) The Regional Administrator shall withdraw such a comment when satisfied that the State has met or refuted his or her concerns.

(e) Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of Part 124, Subpart E or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the following conditions:

(1) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition of that permit.

(2) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition that the Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

(3) The Regional Administrator may not take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition necessary to implement approved State program requirements unless the Regional Administrator stated in commenting on the permit

application or draft permit that that condition was necessary.

(4) The Regional Administrator may take action under section 7003 of RCRA against a permit holder at any time whether or not the permit holder is complying with the permit conditions.

§ 123.135 Approval process.

(a) Within 30 days of receipt of a complete program submission for Phase I or for a component of Phase II of interim authorization, the Regional Administrator shall:

(1) Issue notice in the Federal Register and in accordance with § 123.39(a)(1) of a public hearing on the State's application for interim authorization. Such public hearing will be held by EPA no earlier than 30 days after notice of the hearing, provided that if significant public interest in a hearing is not expressed, the hearing may be cancelled if a statement to this effect is included in the public notice. The State shall participate in any public hearing held by EPA.

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State's submission for inspection and copying by the public. The State submission shall, at a minimum, be available in the main office of the lead State agency and in the EPA Regional Office.

(b) Within 90 days of the notice in the Federal Register required by paragraph (a)(1) of this section, the Administrator shall make a final determination whether or not to approve the State's program taking into account any comments submitted. The Administrator will give notice of this final determination in the Federal Register and in accordance with § 123.39(a)(1). The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

(c) Where a State has received interim authorization for Phase I or for Phase I and for some but not all components of Phase II the same procedures required in paragraphs (a) and (b) of this section shall be used in determining whether the amended program submission meets the requirements of the Federal program.

§ 123.136 Withdrawal of State programs.

(a) The criteria and procedures for withdrawal set forth in §§ 123.14 and 15 apply to this section.

(b) In addition to the criteria in § 123.14, a State program may be withdrawn if a State which has obtained interim authorization fails to meet the schedule for or accomplish the additions or revisions of its program set forth in its authorization plan.

§ 123.137 Reversion of State programs.

(a) A State program approved for interim authorization for Phase I or for Phase I and for some but not all components of Phase II shall terminate on the last day of the 6th month after the effective date of the last component of Phase II and EPA shall administer and enforce the Federal program in the State commencing on that date if the State has failed to submit by that date an amended submission pursuant to § 123.122(c)(7).

(b) A State program approved for interim authorization for Phase I or for Phase I and for some but not all components of Phase II shall terminate and EPA shall administer and enforce the Federal program in the State if the Regional Administrator determines pursuant to § 123.135(c) that a program submission amended pursuant to § 123.122(c)(7) does not meet the requirements of the Federal program.

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Part VII

Environmental Protection Agency

State Hazardous Waste Programs; Requirements for Compliance Evaluation Programs During Interim Authorization

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL 1724-S]

State Hazardous Waste Programs; Requirements for Compliance Evaluation Programs During Interim Authorization

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment to rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today revising its regulations specifying the type of compliance evaluation program a State must have to qualify for interim authorization to operate a hazardous waste management program in lieu of the Federal program under the Resource Conservation and Recovery Act of 1976, as amended, (RCRA). The existing regulations, which require that States have independent State authority to conduct compliance inspections, are being revised to take into account Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). That section gives States direct Federal authority to conduct compliance inspections after they have received interim authorization. The amendments are being promulgated in interim final form and the Agency solicits comments on these amendments by the date specified below.

DATES: Effective date: These regulations take effect on January 26, 1981. Comment date: The Agency will accept comments until March 27, 1981.

ADDRESS: Comments should be addressed to Docket Clerk (Docket No. 3006), Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact John H. Skinner, Director, State Programs and Resource Recovery Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9107.

For information on implementation of these regulations, contact the EPA regional offices below:

Region I

Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II

Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III

Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980.

Region IV

James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 881-3016

Region V

Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI

R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-2645

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Region VIII

Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX

Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606

Region X

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260.

SUPPLEMENTARY INFORMATION:

I. Authority

These amendments are issued under the authority of Sections 1006, 2002(a), 3006 and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6926, and 6927, and under Sections 553(b)(B) and 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d).

II. The Amendments

On May 19, 1980, EPA promulgated a series of regulations setting forth requirements for States seeking to qualify for interim authorization under Section 3006(c) of RCRA, 42 U.S.C. 6926(c) to operate a State hazardous waste management program in lieu of the Federal program. States were required under those regulations to have as a part of their compliance evaluation program independent State inspection and surveillance authority. 40 CFR 123.128(g).

In connection with its review of State applications for Phase I interim authorization, EPA has determined that this requirement is unnecessary because Section 3007(a) of RCRA, 42 U.S.C. 6927(a), gives States direct Federal authority to conduct inspections after they receive authorization to operate a State hazardous waste management program in lieu of the Federal program. Section 3007(a) states in pertinent part:

> For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall . . . upon request of any duly designated officer, employee, or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, such officers, employees, or representatives are authorized—
>
> (1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, or disposed of, or transported from;
>
> (2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes [42 U.S.C. 6927(a), as amended].

This direct grant of inspection authority obviates the requirement that a State have independent inspection authority under State law to qualify for interim authorization.

These revisions to the regulations provide that a State may either rely on independent inspection authority under State law or on the direct grant of Federal authority under Section 3007(a) of RCRA to qualify for interim authorization. The amendments require that if the State relies on the authority contained in Section 3007(a), the State's application must contain assurances that there are no provisions of State law which would act as impediments to the State's use of the direct grant of authority contained in Section 3007(a).

Section 123.128(g)(3), which describes the type of independent authority a State must have it if does not rely on Section 3007(a), has been integrated into the revised § 123.128(g). Section 123.128(g)(3) was also revised to clarify that independent State authority must include the authority to obtain samples. The requirements in § 123.128(g)(2) regarding the State procedures for determining compliance or non-compliance with applicable program requirements have been integrated without change into revised § 123.128(g).

III. Interim Final Promulgation

These revisions to § 123.128(g) are being promulgated in interim final form.

EPA believes that prior notice and comment is unnecessary and would be contrary to the public interest. These regulatory changes are quite minor. They simply make the regulations under § 123.128(g) consistent with the language of Section 3007(a) of RCRA by eliminating an unnecessary requirement. Since the amendments do not expand or contract the requirements applicable to the regulated community nor substantially affect the States' own program, advanced notice and opportunity for comment is unnecessary. Furthermore, EPA is in the process of reviewing State applications for interim authorization. Some states do not have independent State authority to conduct inspections. Hazardous waste management programs in these States, although substantially equivalent in all other respects to the Federal program under RCRA, would not qualify for interim authorization because of the unnecessary requirement in EPA's regulations that States have independent State authority to conduct inspections. To refuse to grant interim authorization to these States would be contrary to the public interest and would frustrate the intent of Congress that States with hazardous waste management programs substantially equivalent to the Federal program be permitted to operate those programs in lieu of the Federal program. EPA's regulations must be changed immediately to permit EPA to authorize State programs that comply with its requirements in all other respects. Therefore, good cause exists for promulgating the regulations in interim final form, effective immediately, without prior notice and comment.

To afford the public an opportunity to comment on the changes, EPA will accept comments until March 27, 1981. These comments will be considered in developing the final regulation.

Douglas M. Costle,

Administrator.

January 19, 1981.

40 CFR Part 123 is amended by revising section 123.128(g) to read as follows:

§ 123.128 Program requirements for interim authorization for Phase I.

* * * * *

(g) *Requirements for compliance evaluation programs.*

(1) A State program under this Subpart shall have procedures for receipt, evaluation, recordkeeping, and investigation for possible enforcement of all required notices and reports.

(2) The State program shall (i) include independent State inspection and surveillance authority to determine compliance or non-compliance with applicable program requirements; or (ii) the State program shall indicate that the State will rely on and act under the inspection authority provided in Section 3007(a) of RCRA.

(3) If the State is relying on independent State inspection and surveillance authority, the authority shall include authority to enter any conveyance, vehicle, facility, or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, obtain samples, monitor or otherwise investigate compliance with the State program. States whose law requires a search warrant prior to entry comply with this requirement.

(4) If the State is relying on the authority in section 3007(a), the State program must contain assurances that there are no provisions of State law which prevent the State from using that authority.

(5) The State program must include:

(i) The capability to make comprehensive surveys of any activitiers subject to the State Director's authority in order to identify persons subject to regulation who have failed to comply with program requirements;

(ii) A program for periodic inspection of the activities subject to regulation;

(iii) The capability to investigate evidence of violations of applicable program and permit requirements;

(iv) Procedures to determine compliance or non-compliance with applicable program requirements including procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(6) Investigatory inspections shall be conducted, samples shall be taken, and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

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Part VIII

Department of Transportation

Federal Aviation Administration

Development and Submission of Airport Operator's Noise Compatibility Planning Programs and FAA's Administrative Process for Evaluating and Determining the Effects of Those Programs and Proposed Amendment to Definition of "Acoustical Change" in Aircraft Noise Certification Rules Relating to Turbojet Engine Powered Transport Category, Large Airplanes

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket Nos. 16279 and 18691; Adoption of Part 150]

Establishment of New Part 150 To Govern the Development and Submission of Airport Operator's Noise Compatibility Planning Programs and the FAA's Administrative Process for Evaluating and Determining the Effects of Those Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule, request for comments; Disposition of petition for rulemaking.

SUMMARY: This action establishes a new, interim regulation prescribing requirements for airport operators who choose to develop an airport noise compatibility planning program under the Federal program. This rulemaking implements portions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193; 94 Stat. 50) adopting, in modified form, rules recommended by the Environmental Protection Agency and prescribes the administrative procedure followed by the FAA in fulfilling its responsibilities under that Act. It inlcudes the establishment of a single system of measuring airport (and background) noise and a single system for determining the exposure of individuals to airport noise. It prescribes a standardized airport noise compatibility planning program, including (1) the development and submission to the FAA of noise exposure maps and noise compatibility programs by airport operators; (2) the standard noise methodologies and units for use in airport assessments; (3) the identification of land uses that are normally compatible (or noncompatible) with various levels of noise around airports; and (4) the procedure and criteria for FAA evaluation and approval or disapproval of noise compatibility programs by the Administrator. While these rules reflect the applicable provisions of the Aviation Safety and Noise Abatement Act of 1979, they are also the outgrowth of, and response to, the recommended regulations submitted by the Environmental Protection Agency on an "Airport Noise Regulatory Process" (Notice No. 76-24), and of a petition for rulemaking from the Air Transport Association (PR Notice No. 79-9), which closely parallel many of the issues considered by the Congress in enacting the 1979 Act. This interim rule does not apply, at this time, to airports used exclusively by helicopters but covers those heliports located on other airports covered by the rule.

DATES: Effective date—February 28, 1981. Comments must be received on or before December 31, 1981.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 16279, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Interim Rule

This action is in the form of an interim rule, which involves implementation of statutory requirements that must be established by February 28, 1981, and adoption of internal agency procedures for the administration of the regulatory program. Although this rule is based largely on Notice No. 76-24 (41 FR 51522), full implementation of the statutory requirements dictates certain provisions in the rule that vary substantively from those proposed in that notice. Accordingly, comments are invited on the interim rule based on the rule text and experience under the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and in determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule.

Synopsis of the Regulation

The purpose of this interim rule is to adopt regulations in response to EPA recommendations as modified, by establishing a new Part 150 of the Federal Aviation Regulations (the "FARs"). The EPA recommended rules have been modified in several respects to reflect FAA action concerning major portions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193; 94 Stat. 50: the "ASNA Act") that do not involve Federal funding of airport noise compatibility planning. As provided under the ASNA Act, new Part 150 applies to air carrier airports (that is—those operated under a valid certificate issued under § 612 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1432: The "FA Act")) whose development projects are eligible for terminal development costs under § 20(b) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1720(b)). The definition of an "airport" under Part 150 does not cover those airports used exclusively by helicopters but does apply to airports that are open to public use without prior authorization of the airport operator. The implications of applying Part 150 to heliports are not fully understood at this time. Additional evaluation of the matter is needed to determine whether the rules should be expanded to cover those airports used exclusively by helicopters and whether the noise compatibility planning regulation should use a different basis to evaluate the noise related to operation of those heliports on the community. Under the authority of § 611 of the Federal Aviation Act of 1958, as amended, the practical benefits of noise compatibility planning and FAA assistance, evaluation, and determination on those plans are extended to many additional public use airports by new Part 150. However, some of the legal consequences of that planning are limited by the ASNA Act to the eligible, air carrier airports. The FAA has no authority to extend those statutory matters beyond those provided by the ASNA Act.

New Part 150 contains the procedures, standards, and methodology governing the development and submission of "airport noise exposure maps" and "airport noise compatibility programs." It prescribes the two standardized noise systems required by § 102 of the ASNA Act. One is the system for measuring airport noise, which has a high degree of correlation between the projected noise exposure levels and the surveyed reactions of people to those noise levels.

For that purpose, Part 150 uses the A-weighted sound pressure level (L_A) in units of decibels (dBA) or an FAA approved equivalent. It also designates a standardized system for determining the level of airport noise exposure. That measurement includes the factors of intensity, duration, frequency, tone, and a penalty for night-time occurrences. Under Part 150 that noise exposure must be calculated in terms of "yearly day-night average sound levels (L_{dn})," or an FAA approved equivalent for those situations where unusual and unique conditions at the airport dictate the use of another unit of measurement to properly evaluate noise exposure to individuals within the meaning and purpose of the ASNA Act. Two appendixes contain the technical matters relating to the development of the "noise exposure maps" (and related descriptions) and the "airport noise compatibility programs."

New Part 150, as required under the ASNA Act, identifies those land uses that are "normally compatible" or "noncompatible" with various levels of noise exposure by individuals. Those uses, contained in Appendix A, must be reflected on the noise exposure maps and in the airport operator's noise compatibility programs which are intended to reduce existing noncompatible land uses and prevent the introduction of new ones. Those land uses classifications were developed by the FAA based on its evaluation and assessment of similar determinations by other Federal agencies which are responsible for specific Federal programs in which noise exposure is a factor. To the extent practicable, FAA's "normally compatible" and "noncompatible" land uses are comparable to, and congruous with, although separate from, other Federal programs directed towards similar considerations of noise exposure. By identifying "normally compatible" land uses, Part 150 does not usurp or preempt the authority and responsibility of State and local authorities to exercise their police powers with respect to the development and implementation of local land use policy. It provides assistance to them and to airport operators in developing adequate airport noise compatibility planning. It does not direct the uses which any particular area may have now or in the future. The ASNA Act merely directs the Administrator to make judgments on whether an airport operator's noise compatibility program is consistent with obtaining the goal of noise level exposure reductions. It also reinforces the Administrator's authority to make determinations on certain matters that are already federally preempted, such as flight safety, use of the navigable airspace of the United States, impacts on interstate and foreign commerce, and unjustly discriminating actions, as well as the currency of programs that have been approved under the ASNA Act. As such, neither the issuance of these interim regulations implementing Title I of the ASNA Act nor the approval of any airport operator's noise compatibility program authorizes or directs any change in conditions that might affect the environment. Accordingly, the FAA has concluded, in accordance with FAA's directive concerning environmental considerations (Order 1050.1C), that these interim regulations and any "approvals" made pursuant to them are not major Federal actions significantly affecting the quality of the human environment and are "excluded actions," respectively. Appropriate environmental assessments of any Federal actions involving the implementation of those approved programs will be made in conjunction with those actions. It is not possible at this time to evaluate the individual or overall environmental aspects of the programs that airport operators might develop and wish to implement.

A significant aspect of new Part 150 is its description of the administrative process to be followed by the FAA when it receives a noise exposure map or airport noise compatibility program (or their revisions) from an airport operator in accordance with the ASNA Act. The Secretary of Transportation has delegated to the Federal Aviation Administrator the authority and responsibility to implement and administer the Aviation Safety and Noise Abatement Act of 1979 (49 CFR 1.47(m): 45 FR 54054; August 4, 1980). The FAA's Director of the Office of Environment and Energy (the "Director") has the primary responsibility for administering the Part 150 airport noise compatibility planning program. Airport operators must submit their noise exposure maps, noise compatibility programs, and their revisions to the Director and to the Regional Director of the FAA Regional Office having jurisdiction over the area in which the airport is located. If the submission conforms to the applicable requirements, it is accepted by the FAA and a notice of receipt is published in the Federal Register. If it does not conform, the Director will return it to the airport operator for further consideration and development to achieve conformity.

Noise exposure maps and noise compatibility programs must be prepared in accordance with Appendixes A and B of Part 150, respectively, or an FAA approved equivalent. The FAA is concerned that planning work already completed under the Airport Noise and Land Use Compatibility (ANCLUC) program not be ignored and that airport operators be allowed to incorporate, where appropriate, that work in their submissions.

The Director conducts (and coordinates within the FAA) the necessary evaluations of noise compatibility programs and, within the prescribed time period, recommends to the Administrator whether to approve or disapprove the program. The Director is provided broad discretion to conduct the evaluation and to follow the necessary procedures to ensure that the decision will be made efficiently and on a well-informed and reasoned basis. Some of the evaluation criteria are prescribed under section 104 of the ASNA Act but in other situations, such as those relating to flight procedures or affecting the safe and efficient use of the navigable airspace, the FAA will apply applicable policy and program criteria to the matters presented by the program. The Director only considers one program at a time for any specific airport; thus, one program may be revised or withdrawn before an FAA determination is issued in order to present a new program. Except for specific situations, each revised program is considered under the rule as a new program. Under prescribed conditions, an approval may be revoked or modified for cause after notice to the airport operator. Determinations become effective upon issuance and continue until revoked or modified, or until the program is required to be revised under the rule.

Regulatory History

On October 26, 1976, the EPA submitted to the FAA a recommended regulation concerning an airport noise regulatory process, pursuant to section 611(c) of the Federal Aviation Act of 1958 as amended by the Noise Control Act of 1972 (Pub. L. 92-574). Section 611(c)(1) provides that the EPA may submit to the FAA its recommendation for proposed regulations or amendments to regulations to provide for the control and abatement of aircraft noise through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations.

The FAA published Notice No. 76-14 on November 22, 1976, containing the

EPA's recommended amendment of Subchapter G of the Federal Aviation Regulations (14 CFR Subchapter G) to establish a new Part 140 prescribing "procedures for the development, approval, and implementation of an Airport Noise Abatement Plan for airports required to be certificated under Part 139" (41 FR 51522). Pursuant to notice, a public hearing was held in Washington, DC, on January 17, 1977, before a panel of FAA and EPA personnel (41 FR 51533; November 22, 1976). This amendment is, in part, notice of the Administrator's decisions on those recommendations and his reasons for those decisions required under section 611(c).

Subsequently, the Air Transport Association of America submitted to the FAA a petition for rulemaking, dated January 16, 1979, requesting the Administrator to initiate rulemaking proceedings to adopt regulations prescribing the process under which airport noise abatement plans, or similar restrictions upon the operation of aircraft at an FAA certificated airport, must be submitted to, and considered by, the FAA before the plan may be implemented. The petition was published verbatim as Petition Notice No. PR-79-9, "Petition for Rulemaking of the Air Transport Association of America, Airport Noise Abatement Plans: Regulatory Process," (44 FR 52076; September 6, 1979). For the benefit of commenters, the EPA recommended rule was republished as an appendix to Notice No. PR-79-9. This action is, in part, the Administrator's response to that petition as contemplated under FAR Part 11.

The Aviation Safety and Noise Abatement Act of 1979 (the "ASNA Act": Pub. L. 96-193), signed by the President on February 18, 1980, was enacted "to provide and carry out noise compatibility programs, to provide assistance to assure continued safety in aviation, and for other purposes." Title I of the ASNA Act requires the Secretary of Transportation, after consultation with the EPA and such other Federal, state, and local interstate agencies as he deems appropriate, to establish single systems for measuring noise at airports and determining noise exposure, and to identify compatible land use within twelve months of enactment of the ASNA Act. It also establishes that airport operators, as defined by the Act, may submit to the Secretary noise exposure maps setting forth the noncompatible land uses within the vicinity of the airport. Those airport operators are also authorized to submit noise compatibility programs for approval by the Secretary. The ASNA Act provides that funding through grants-in-aid may be made available for airport noise compatibility planning. The authority and responsibilities of the Secretary under the ASNA Act were delegated to the Federal Aviation Administrator on August 6, 1980 (45 FR 54054; August 14, 1980).

Thus, in many respects, the ASNA Act dictates, or significantly influences, the substantive response to both the EPA's recommended rule and the ATA's petition for rulemaking.

On December 17, 1980, based on their request for an immediate meeting, representatives of the major helicopter and helicopter engine manufacturers met with the FAA to express their concern regarding a possible FAA application of an ASNA type noise compatibility planning regulation to small airports used exclusively by helicopters. On January 7, 1981, the representatives jointly presented to the FAA their detailed analysis of the potential impact of including heliports not located on other airports under the new Federal Aviation Regulation that might follow the EPA and ATA recommendations in light of the requirements of the ASNA Act. That submission has been placed in the Rules Docket and is available for public examination.

The FAA's review of the submission and its own review of the matter of small heliports lead to several conclusions—(1) that the ASNA Act does not expressly require the application of implementing regulations to airports used exclusively by helicopters; (2) that no airports used exclusively by helicopters currently satisfy the definitional qualities of an "airport" under the ASNA Act; (3) that there is an almost total absence of information concerning the noise implications of the operations of those small heliports on the surrounding community; and (4) that if the industry contention is correct, the direct application of the Part 150 methodologies to those heliports may not achieve the objectives of airport noise compatibility planning, to the detriment of the surrounding community, the heliport operator, helicopter operators, the helicopter industry, and the national transportation system.

The alternatives were presented to the FAA as it faced the fast approaching statutory deadline to prescribe regulations and the surprising absence of helpful, relevant data on which to evaluate the industry contentions. Either the FAA had to proceed to cover those heliports in the regulations without substantive, technical basis or exclude them, at least temporarily, from the coverage of the interim rule until adequate information is found or developed on which to base a supportable decision. The FAA concluded that, since there is no airport used exclusively by helicopters under the ASNA Act definition, the only responsible action would be to defer the discretionary regulatory decisions affecting those heliports. Thus, the term "airport" as used in new Part 150 does not include those airports used exclusively by helicopters.

During the period of the interim rule, the FAA will conduct a thorough review of the available information and, if necessary, institute appropriate studies to develop data which is currently not available. Based on those efforts, if it is found appropriate, additional rulemaking will be initiated by the FAA to propose and adopt any necessary regulations for those airports used exclusively by helicopters.

Relation to Notice No. 76-24

This interim rule is based, in major part, on the regulatory proposals submitted to the FAA by EPA and published in Notice No. 76-24. However, some substantive changes have been made to accommodate full implementation of the ASNA Act. The major provisions contained in the notice are summarized below, along with their disposition in the interim rule. This preamble covers those matters in more detail under appropriate discussions not repeated here to avoid unnecessary repetition.

The EPA recommended that the FAA add a separate part to the Federal Aviation Regulations prescribing procedure for the development, approval, and implementation of airport "nose abatement plans" for airports certificated under Part 139. The interim rule does that, except that the term "airport noise compatibility program" is used instead, to reflect the ASNA Act terminology.

The EPA recommended that submission of those plans be mandatory by means of requiring them for new or continued certification of the airport. This interim rule, in consonance with the ASNA Act, makes voluntary the development and submission of noise compatibility programs but prescribes the standardized methodology for those programs that are developed for submission to the FAA under the program prescribed in the regulation. Further, the FAA has broadened the applicability of the rule to permit participation by other public use airports on the same voluntary basis.

A key element of the EPA recommended plan is a map of the airport and its environs including the map noise contours around the airport. This interim rule contains similar requirements.

The EPA recommended requiring that the noise contours be expressed in terms of Day-Night Average Sound Level (L_{dn}). Part 150 specifies the use of L_{dn}. Further, the interim rule specifies the complimentary, single event measurement unit (L_A), as required by the ASNA Act.

The EPA recommended the development of a table of land use compatibility with day-night average sound level for buildings as commonly constructed. Part 150 contains such a table. The table in Notice No. 76–24 contained seven major land use categories; the table in Part 150 contains five major land use categories and 23 subcategories.

The EPA recommended that the FAA prescribe a complex method for indigenous and ambient (nonaircraft) noise levels. This method was identified as the "Airport Noise Evaluation Process" (ANEP). In response to comments to the docket, Part 150 does not contain the ANEP. Instead, the FAA has elected to leave the choice of a method for accounting for nonaircraft noise around the airport to the airport operator. However, like Notice No. 76–24, Part 150 excepts from identification as noncompatible those areas where the indigenous or ambient noise levels equal or exceed the noise from aviation sources.

Notice No. 76–24 recommended requiring identification of each "governmental entity" which has "comprehensive land use planning and control authority" within the L_{dn} 55 contour, even though the EPA did not identify any noncompatible land uses below L_{dn} 65. Part 150 requires the identification of all "public agencies and planning agencies" having jurisdiction within the L_{dn} 65 contour.

The EPA recommended that the rules require each airport operator to conduct "a public hearing" prior to submission of a plan to afford all interested persons an opportunity to submit data, views, and comments with regard to the merits of the draft plan. Part 150 requires airport operators submitting programs to afford all interested persons similar opportunities, but does not restrict the method solely to public hearings. Both the EPA recommendation and the interim rule require an accounting of public participation in the final plan or program.

Notice No. 76–24 would require analysis of the effect of the proposed plan on reducing noise impact in the surrounding community for the years two, five, and ten years after the date of submission. The ASNA Act only requires analysis at the time of submission and for 1985. Part 150 combines the two approaches by requiring analysis for the date of submission, for 1985, as required by the ASNA Act, and, if the submission is made after December 31, 1982, for the five years after the submission.

The EPA recommended the rule to require submission of a revised plan not later than four years after approval of the original plan. Part 150, in compliance with the ASNA Act, requires submission of revised maps and program plans whenever any actual or proposed change in the operation of the airport might create any substantial, new, noncompatible use in any area depicted on the map.

The EPA recommended that the FAA process of review of noise plans be conducted administratively in conjunction with airport certification. While the interim rule does not rely on airport certification, the process under which the FAA will review submissions to it under Part 150 is an administrative process, with public notification by publishing appropriate notices in the Federal Register.

The Need For This Amendment

As previously indicated, the EPA has submitted to the FAA under § 611(c) of FA Act a recommended regulation concerning airport noise certification which was published in Notice No. 76–14. The same statutory provision requires the FAA to respond to the proposed regulation by adopting it as presented by the EPA (or some modification of it) or by publishing a notice of the decision not to prescribe any regulation in response to EPA's submission. Accordingly, pursuant to § 611(c), this action, in part, constitutes FAA's response to the EPA recommendations in light of the subsequent provisions of the ANSA Act.

Similarly, Subpart C of Part 11 of the Federal Aviation Regulations requires the FAA to respond to petitions for rulemaking submitted in accordance with that part. Since the Air Transport Association of America submitted a petition concerning airport noise abatement plans (Notice No. PR 79–9) which is affected by implementation of the ASNA Act, this action is also the FAA's response to that petition in light of the subsequent enactment of the ASNA Act.

As discussed throughout this preamble, Title I of the ASNA Act requires implementation before February 28, 1981 by adopting regulations prescribing specific, standardized systems for noise measurement and noise exposure and identifying "normally compatible" land uses around airports. Once those regulations become effective, airport operators may begin submitting "noise exposure maps" and then "noise compatibility programs" for evaluation and approval or disapproval. The practical effect of those provisions is to prescribe the FAR's procedural rules for handling those submissions. To provide for orderly and fair administration of that program, those rules should be adopted on or before the effective date of the expressly required regulations. Accordingly, this interim rule encompasses both the substantive and procedural aspects of the implementation of the ASNA Act to provide the basis for both the regulatory and administrative programs contemplated by Title I of that Act. Before the interim rule is made final, the FAA will review any comments and suggestions submitted to the Rules Docket and, based on those communications, FAA's experience under the interim rule, and other available information, may modify the rules to better achieve their objectives.

Further, this amendment to the Federal Aviation Regulations on the subject of aviation noise serves to fill a need which has been articulated by the actions of the Congress, the Environmental Protection Agency, and the Air Transport Association of America, even though each has taken a different approach to the problems each feels should be addressed.

The adoption of FAR Part 36 in 1969 prohibited the further escalation of aircraft noise levels of subsonic civil turbojet and transport category airplanes and required new airplane types to be markedly quieter than those previously developed. Subsequent amendments extended the noise standards to include propeller-driven, small airplanes and supersonic transport category airplanes. The FAA has proposed noise standards for helicopters but has not adopted a final rule based on its proposal. Part 36 provides for aircraft noise certification and specifies noise limitations, based on gross weight, measured at specified points on the ground, in accordance with prescribed noise testing methodology.

The FAA has required reduction of aircraft noise at the source through certification, modification of engines, or replacement of aircraft; it regulates flight procedures for noise abatement purposes, and provides assistance to

airport operators and community representatives in development of airport noise control and land use compatibility programs. Airport proprietors are responsible for taking the lead in local aviation noise control. However, reduction of aircraft noise impacts is a complex issue with several parties sharing the responsibility: the Federal Government, airport proprietors/operators, State and local governments and planning agencies, aircraft operators, air travelers and shippers, and local residents.

Although many elements are involved, the prime responsibility under the ASNA Act for developing a program designated to reduce the exposure of individuals to noise in the vicinity of a particular airport lies with the airport operators. However, it should be noted that State and local governments and planning agencies also have important responsibilities. Significant benefits can be obtained through the airport proprietor, local jurisdictions, and the FAA working together to develop airport noise control and land use compatibility plans.

Title I of the ASNA Act enforces the authority of the FAA in providing assistance for airport noise compatibility planning and establishes that any operator of a certificated airport may submit a "noise exposure map" setting forth the noncompatible land uses around the airport. Subsequently, an airport operator who has submitted a "noise exposure map" may then submit a "noise compatibility program" setting forth measures reducing noncompatible land uses in the vicinity of the airport and precluding the introduction of additional noncompatible land uses. The noise program submitted to the FAA may be approved or disapproved on the basis of any undue burden on interstate or foreign commerce and whether it is reasonably consistent with obtaining the goal of minimizing noncompatible land uses. The program must also contain provisions of its updating and periodic revision. The ASNA Act requires the Secretary to prescribe standardized methods of measuring noise and noise exposure at airports, and to identify the land uses which are normally compatible with various noise exposures. It does not preempt, but reinforces the appropriate exercise of local authority and responsibility for airport noise abatement and land use planning, zoning, or the exercise of related police powers. The approval or disapproval of an operator's airport noise compatibility program under new Part 150 is not a Federal finding that the noise levels or land uses associated with the program are, or should be, acceptable for that area under Federal, State, or local law.

The implementation of the provisions of Title I of the ASNA Act assures that an airport operator's measures in noise compatibility programs do not place an undue burden on interstate or foreign commerce or would not be incompatible with the management of the air navigation system. Thus, it is also necessary to issue, as part of the interim rule, the procedural requirements for submitting airport noise programs to the FAA for evaluation and consideration for "approval." Accordingly, this rule specifies noise systems and descriptors and identifies normally compatible land uses for use in developing noise compatibility programs and specifies the procedures for submitting noise exposure maps and noise compatibility programs.

Regulatory Issues

The Federal Government has preempted certain areas of controlling aviation in the United States. The principal aviation responsibilities assigned to the Federal Aviation Administrator under the Federal Aviation Act of 1958, as amended, include safety, operating and air traffic rules, and airspace assignment and use. The basic national policies intended to guide actions under the FAA Act are set forth under section 103 (49 U.S.C. 1303), which include:

(a) The regulation of air commerce in such manner as to promote its development and safety and fulfill the requirements of national defense;

(b) The promotion, encouragement, and development of civil aeronautics;

(c) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both; and

(d) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft.

To achieve these statutory purposes, §§ 307 (a) and (c) of the Federal Aviation Act, 49 U.S.C. 1348 (a) and (c), provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace and air traffic control. The FAA has exercised that authority, in part, by promulgating comprehensive Federal regulations on the use of navigable airspace and air traffic control (14 CFR Parts 71; 73; 75; 77; 91, Subpart B; 93; 95; 97; 99; 101; 105; and 157). Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under Title VI of the Federal Aviation Act, § 601 *et seq.* (49 U.S.C. 1402 *et seq.*) by extensive Federal regulatory action, including 14 CFR Parts 21 through 43, 61 through 67, 91, 121 through 149.

In legal terms, the Federal Government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and flight safety. The doctrine of preemption, which flows from the Supremacy Clause of the Constitution, is essentially that state and local authorities do not have legal power to act inconsistently with matters already subject to comprehensive Federal law, including regulations of general applicability and legal effect.

In the area of noise regulations, the FAA has set clear Federal standards for the certification and manufacture of aircraft (14 CFR Parts 21 and 36) and set time limits on the use of older, nonconforming airplanes and speed limits on supersonic aircraft in U.S. airspace (14 CFR Part 91, Subpart E).

In addition to its regulatory authority over aircraft safety and noise, the FAA has administered a program of Federal grants-in-aid for airport construction and development (14 CFR Parts 152 and 154). Through its decisions on whether to fund particular projects, the FAA has been able, to a degree, to ensure that new airports or runways will be planned and developed with noise considerations in mind. That indirect authority was measurably strengthened when in 1970 the Airport and Airway Development Act expanded and revised the FAA's grant-in-aid program for airport development and added environmental considerations to project approval criteria. Amendments to the 1970 Act have increased funding levels and provided new authority to share in the costs of certain noise abatement activities, but the ability of the FAA to provide financial assistance remains limited in terms of both percentage of project costs and the types of projects eligible for Federal aid.

Thus, the Federal Government has preempted the areas of airspace use and management, air traffic control, safety and the regulation of aircraft noise at its source. The Federal Government also has had substantial influence on airport development through its administration of the Airport and Airway Development Program.

Nevertheless, there remains a critical role for state and local authorities in protecting their citizens from unwanted aircraft noise, principally through their

powers of land use control. Control of land use around airports to ensure that only compatible development may occur in noise-impacted areas is a key tool in limiting the number of citizens exposed to airport noise, and it remains exclusively a governmental function in the control of state and local governments. Occasionally, it is a power exercised by individual airport operators who are also the state or municipal governments and can exercise police powers to achieve appropriate land use controls through zoning and other authority. But even where governmental bodies are themselves airport operators, the noise impacts of their airports often occur in areas outside their jurisdiction. Other police power measures, such as requirements that noise impacts be revealed in real estate transactions, may also be available to them. Finally, local governments have legal authority to take noise impacts into account in their own activities, such as their choice of location and design for new schools, hospitals, or other public facilities, as well as sewers, highways and other basic infrastructure services that influence land development. The responsibilities of airport proprietors/operators, including State and local governments active in the proprietary capacity, are, in certain respects, more restricted than those of State and local government exercising police powers. Under the Supreme Court decision in *Griggs* v. *Allegheny County,* 369 U.S. 84 (1962), proprietors are liable for "taking of property" resulting from operations from their airport. The proprietor, the Court reasoned, planned the location of the airport, the direction and length of the runways, and often has the ability to acquire more land around the airport and otherwise mitigate noise impacts. From that control flows the liability, based on the constitutional requirement of just compensation for property taken for a public purpose. The Court concluded: "Respondent in designing the Greater Pittsburgh Airport had to acquire some private property. Our conclusion is that by constitutional standards it did not acquire enough." The role of the proprietor described by the Court remains essentially the same today.

But the proprietor's responsibilities do not end there. A three-judge district court observed in *Air Transport Association* v. *Crotti,* 389 F. Supp. 58 (N.D. Cal., 1975):

> "It is now firmly established that the airport proprietor is responsible for the consequences which attend his operation of a public airport; his right to control the use of the airport, is a necessary concomitant, whether it be directed by state police power or by his own initiative * * *. Manifestly, such proprietary control necessarily includes the basic right to determine the type of air service a given airport proprietor wants his facilities to provide, as well as the type of aircraft to utilize those facilities * * *."

The *Crotti* case held that part of the State of California airport noise statute imposing noise abatement duties on airport proprietors was not *per se* unconstitutional and reserved judgment as to its constitutionality in its implementation. The Court in *Crotti* struck down as unconstitutional that portion of the California statute which provided for sanctions against the operator of an aircraft that exceed a single-event noise standard on takeoff or landing, because it represented a clear interference with the FAA's exclusive control over flight operations in the navigable airspace.

In the subsequent *National Aviation* v. *City of Hayward* case, 418 F. Supp. 417 (N.D. Cal. 1976), an air freight company sought to enjoin a curfew on noisier aircraft imposed at the municipally owned Hayward Air Terminal. The court addressed the legal issue of the rights of a proprietor and found that the curfew had not been preempted by the Federal Government:

> (T) his court cannot, in light of the clear Congressional statement that the amendments to the Federal Aviation Act were not designed to and would not prevent airport proprietors from excluding any aircraft on the basis of noise considerations, make the same findings with respect to regulations adopted by municipal airport proprietor * * *
>
> Id. at 424, citing S. Rep. No. 1353, 90th Cong., 2d Sess., 6-7; see also, *British Airways Board et. al* v. *Port Authority of New York,* 558 F. 3d 75 (2d Cir. 1977).

The court went on to indicate that the FAA had the authority to preempt such proprietor regulation although it had not yet exercised it. The court also found that the ordinance, which required some of the plaintiff's aircraft to use another airport between 11:00 p.m. and 7:00 a.m., had an effect on interstate commerce, but that the effect was:

> * * * incidental at best and clearly not excessive when weighed against the legitimate and concededly laudable goal of controlling the noise levels at the Hayward Air Terminal during late evening and morning hours.
>
> *Hayward,* supra at p. 427.

Thus, an airport proprietor's ability to control what types of aircraft use its airport, to impose curfews or other use restrictions is not unlimited. Though not preempted, the proprietor is subject to two important Constitutional restrictions. The proprietor first may not take any action that imposes an undue burden on interstate or foreign commerce and, second, may not unjustly discriminate between different categories of airport users. (See, *British Airways Board* v. *Port Authority of New York,* 569 F. 2d 1002 (2d Cir 1977); *Santa Monica Airport Association et. al* v. *City of Santa Monica,* 481 F. Supp. 927 (C.D. Cal. 1979).)

The EPA recommendation in Notice No. 76-24 proposed to require airport proprietors to develop and implement noise control plans with the approval of the FAA. That process would apply to all airports certificated by the FAA under FAR Part 139, which governs the certification and operation of land airports serving air carriers that hold certificates of public convenience and necessity issued by the Civil Aeronautics Board.

ATA, representing most of the certificated scheduled air carriers in the United States, subsequently submitted a somewhat similar proposal in their petition. However, the emphasis in the ATA petition was on setting up a formal, adjudicatory, and public hearing process for noise control plans. In his letter to the FAA submitting the ATA's petition, Mr. Paul R. Ignatius stated:

> The thrust of the attached rulemaking proposal is to establish a regulatory procedure under which any airport proprietor desiring to implement a noise abatement plan, that would restrict aircraft operations in interstate or foreign air transportation, would not be able to implement that plan without submitting it to the FAA at least 90 days in advance of proposed effectiveness. Upon publication in the Federal Register, any interested party could file a statement in support of or a complaint against implementation of the plan. Based upon such a complaint, or upon his own motion, the Administrator could suspend the implementation of the plan for a maximum period of 180 days beyond its proposed effectiveness. Interested parties could then submit written position statements to the FAA supporting or opposing the plan, and a formal hearing could be convened. There are several levels of administrative appeal provided for before the Administrator issues a final decision whether to disapprove a proposed plan or terminate an existing plan.
>
> "As stated in the ATA petition:
>
> The FAA would not be required to approve each airport proprietor plan, but would be required to take action only upon a finding that a proposed plan, if implemented, or an existing plan, if continued, would adversely affect a valid Federal interest. Also, the proposed regulation would authorize (1) disapproval of a proposed plan or (2) termination of an existing plan on the basis of individual or cumulative impact. This would permit review and termination of a state or local plan, even after it had been subjected to the hearing process without disapproval, based upon a finding that the

cumulative effect of that plan, in combination with other plans implemented or proposed subsequent to its effectiveness, would jeopardize the safety of aircraft, interfere with the efficient utilization of the navigable airspace, unduly burden interstate or foreign commerce, be unjustly discriminatory, or conflict with the Federal Aviation Administration's regulatory authority.

Thus, under both the EPA and ATA proposals, the FAA would make the final decision on each noise control plan on an airport-by-airport basis. Each would require the FAA to review the proposed plan's impact on safety, efficiency, and interstate or foreign commerce. While the EPA and ATA clearly disagreed in their approaches to noise control plans and their usefulness, both organizations cited a need for the FAA to set standards for the plan's development, review, approval or disapproval, and implementation.

The Congress, in enacting Title I of the ASNA Act, agreed with that need. As a result, the Secretary of Transportation was directed to set certain uniform standards by requlation. That statute also set specific requirements for both the content and application of these standards. In so doing, that legislation expressed the congressional will on those issues and provided compelling guidance for the course of regulatory decisions left to the discretion of the Administrator in responding to the outstanding issues. Those matters include the following:

Noise Standards—The Federal Government (FAA) must set uniform standards for the measurement and evaluation of noise at and around airports. [Section 102]

Land Use Standards—The Federal Government (FAA) must identify land uses which are normally compatible with various levels of exposure by individuals to airport noise. [Section 102]

Land Use Planning—There is no Federal preemption of the responsibilities of the airport operator or of state and local public agencies and planning agencies. In that regard, the Federal action involves an evaluation of proposed plans to decide whether the land use and other measures of an airport operator's program are reasonably consistent with achieving the goals of reducing existing, and preventing introduction of additional, noncompatible land uses around the airport. The Act also does not speak to any changes in the division of Federal responsibility between the DOT and other Federal agencies or departments, such as the authority of the Department of Housing and Urban Development to determine whether or not to guarantee mortgages. [Sections 103 and 104]

Voluntary Planning—The development of noise maps and noise compatibility programs is voluntary with airport operators and does not become mandatory (such as making them a condition of the certification of an airport or requiring submission of measures for evaluation before implementing them). [Sections 103 and 104]

Review and Approval—The FAA reviews and approves each noise compatibility program submitted to determine whether the measures to be undertaken in carrying out the program (not involving flight procedures for noise control purposes) (1) create an undue burden on interstate or foreign commerce (including unjust discrimination), and (2) are reasonably consistent with obtaining the goal of reducing existing noncompatible uses. The program must also provide for its timely and adequate revision. [Section 104]

Flight Procedures for Noise Control Purposes—The FAA reviews the measures in each noise compatibility program relating to flight procedures for noise control purposes. In determining whether to approve or diapprove those measures, the Administrator considers the full range of FAA responsibilities and programs. Accordingly, consideration is given to safety of flight operations, safe and efficient use of the navigable airspace, management and control of the national airspace and air traffic control systems, the effects on air commerce and air transportation, the potential of unjust discrimination, national defense and security factors, and other, similar statutory and regulatory matters. [Section 104]

U.S. Liability—The United States is not liable for damages resulting from aviation noise by reason of any action taken by the Secretary or the FAA Administrator pertaining to noise compatibility programs. [Section 106]

Systems of Noise Measurement and Evaluation—In part, § 102 of the ASNA Act requires the Secretary, after consultation with the Administrator of the Environmental Protection Agency and such other Federal, state and interstate agencies as he deems appropriate, to establish by regulation—

(a) A single system of measuring noise, for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise, to be uniformly applied in measuring the noise at airports and the areas surrounding such airports; and event and cumulative noise measure systems. Unanimous support was expressed for the designation and use of decibels (A-weighted) for single event measurements and of day-night average sound levels (L_{dn}) for the cumulative noise measure system. As can be seen from statutory requirements, the purpose of standardized measurement and analysis of aviation noise is to evaluate its effect on individuals. To do this, numerous specialized measurement techniques and noise units have been developed over the years. After the required consultations and careful consideration of the alternatives, the FAA has determined that two related noise measuring systems are needed for the evaluation of noise exposure from airports—

(a) Single event measure: A-weighted sound level (L_A) in decibels; and

(b) Cumulative noise measure: Day-night average sound level (L_{dn}) in decibels.

For single event measurements (such as the measurement of noise from the flyover of a single aircraft) for comparison with other single events (typically other aircraft or other transportation modes), the maximum A-weighted sound pressure level is sufficient. In order to compute daily or hourly exposure levels, measurements must be made of multiple events. Computing cumulative noise exposure in terms of L_{dn} requires amplitude-versus-time data. For steady state levels from stationary sources (such as electrical generators or ground runup areas), it is necessary to provide average sound levels in L_A and frequency of occurrence in noise sensitive areas.

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The A-weighted Sound Level (L_A) is already widely used. It has been found to correlate well with individuals' subjective judgments and much of the public is familiar with it. It is apparent that L_A (often described as dBA) is the best choice in the interest of optimizing compatibility with existing noise standards currently in use by Federal, State and local government bodies. In

the December 1977 edition of Sound and Vibration, it is reported that "there are now in excess of 900 local, county and State noise control laws in the United States," (p. 12) and that "dBA is a common unit of measurement for enforcement purposes even among those States using time integation (of sound levels)" (p. 13). Clearly, the A-weighted sound level provides the most compatible unit system for assessment of aircraft noise within the context of other community noise sources. The standard of time A-weighted sound levels over predetermined thresholds is used by the Department of Housing and Urban Development policy Circular 1390.2 as the unit for determining mortgage guarantee eligibility in nonairport environments. The A-weighted sound level is also the basic measure in the Department of Labor, Occupational Safety and Health Standards which establish specified periods of time during which a worker can be exposed to various noise levels. This unit system also serves as the basis for the DOT, Federal Highway Administration criteria for planning and design of highways constructed with Federal aid.

However, it should be noted that while A-weighted sound level is the basic measure for most Federal, State and local noise standards, variations do exist in its method of application. Specifically, those variations involve "integration" (summation of the total energy of an event) versus averaging that same total energy over the event's duration. That measure does not reflect blasts and other clearly impulsive sounds where duration is not an issue. On the other end of the scale, ambient noise standards for traffic and workplace levels are often averaged for several hours or even days. Since aircraft events are typically only several seconds long and since both the peak noise and the associated duration have been shown to affect human response, the FAA has used the maximum A-weighted sound level averaged over about 1.5 seconds for noise certification of propeller-driven light airplanes. This unit (L_{AS}) corresponds to the "slow" response setting on a standard sound level meter. For certificating turbojet powered airplanes, the FAA has integrated the sound over the entire period when the sound level was within ten decibels of its maximum. When this type of integration is applied to A-weighted sound levels, it is known as the Sound Exposure Level (L_{AE}) which is used in the computation of cumulative noise levels. Thus, in specifying the use of A-weighted sound levels as the fundamental noise unit, the FAA has specified a "system of measurement" as required by § 102 of the ASNA Act. When the purpose of the measurement of aircraft noise is intended for comparison to a State or local standard or for comparison with another transportation noise source, L_{AS} generally will be appropriate; when the measurement is intended to be used in the computation of cumulative exposure levels from multiple aircraft events, as in calculating L_{dn} for use under Part 150, either with or without other community noise sources, the data should be analyzed and presented in terms of L_{AE}.

For evaluating the exposure of individuals to noise from airports, the appropriate unit is a cumulative noise measure. While people certainly do respond to the noise of single events (particularly to the loudest single event in a series), the long-range effects of prolonged exposure to noise appear to best correlate with various cumulative measures. Each of those noise units provides a single number which is equivalent to the total noise exposure over a specified time period. In other words, cumulative noise measurements provide information on the total acoustical energy associated with the fluctuating sound during the prescribed time period or the total time over which the sound level exceeded a predetermined threshold. Cumulative noise units are based on both time and energy. A further sophistication is achieved by basing the cumulative noise measure on single event measurements where the frequency spectrum of each event is weighted (shaped) to approximate the response of the human auditory system. The day-night sound level (L_{dn}) recommended by the EPA and accepted as the noise system for Part 150 is such a unit.

L_{dn} is an energy-averaged A-weighted sound level (L_{AE}) measured (intergrated) over a 24-hour period. Further, it incorporates a 10-decibel penalty (step function weighting) for those events that occur between 10:00 p.m. and 7:00 a.m. The purpose of this 10-decibel penalty is to account for increased annoyance to noise during late night and early morning hours.

The FAA has spent several years examining the appropriateness of nighttime penalties in general and the 10-decibel value employed by L_{dn} in particular. In that examination, we have relied heavily on the research and recommendations of the National Aeronautics and Space Administration, the EPA, and other governmental agencies. What has been shown during that examination is that while the specific weight or value of the penalty is subject to debate in terms of both amplitude and time period of application, there is general agreement that some penalty is appropriate. The available research indicates that the 10-decibel penalty used in L_{dn} does represent a reasonable approximation of the differences in response of people to day and night aircraft operations. The FAA recognizes that individual differences in persons and communities may result in variations of the benefits to be derived from the application of this (or any other) night-time penalty. However, as a single national system for the uniform application of the entire day-night noise level system (including the nighttime penalty), it is the best system available for airport planning and for land-use compatibility programs around airports.

The FAA will continue to evaluate the use of L_{dn} and in particular the nighttime weighting factor used in its calculation. If further investigations indicate that improved systems of units are available, or are shown to be more appropriate, any necessary rulemaking action will be initiated.

Land-Use Compatibility Planning

There are existing compatibility problems around many airports; conflicts between airports and their urban environments are evident across the United States. They represent a serious confrontation between two important characteristics of urban life and economics—the need for airports that meet transportation needs and the continuing demand for urban expansion in a manner that protects airport neighbors from excessive noise. Airport owners are finding essential expansion to be difficult and expensive or even impossible at any cost. New residential and noise sensitive area development tends to move closer to the airport from all sides and is the source of continual threat of conflict, sometimes leading to law suits. On the other hand, people living in the vicinity of airports with investments in their homes may view the airport and its associated noise as a threat to their quality of life. To them the airport seems to be ever expanding, with more and larger jets every year. There are often other important sources of conflicts between airports and airport neighbors, such as protection of approaches to runways and the location of persons and property on the ground. These conflicts may be reduced, however, and new ones substantially avoided, through the development and implementation of appropriate airport noise compatibility plans. Such overall plans rely to a large extent on successful

and realistic land use planning for the communities around airports.

The Secretary of Transportation and the FA Administrator jointly issued an Aviation Noise Abatement Policy ("ANAP") on November 18, 1976. The intent of the policy was to significantly reduce the adverse impacts of aviation noise upon the estimated six to seven million most heavily impacted Americans and to achieve a substantial degree of noise compatibility between airports and their environs. The policy recognized that effective noise abatement requires coordinated actions by aircraft owners and operators, the FAA, airport proprietors/operators, airport neighbors and state and local governments. The actions identified in the policy statement include actual source noise reductions through aircraft retrofit/replacement; modifications in takeoff and landing procedures; and development of airport noise control and land use compatibility plans. Those plans have the objective of containing severe noise impacts within airport controlled areas through purchase of land, through purchase of easements for development rights, through changes in land use from noise sensitive to noise tolerant, through acoustical treatment of critical noise sensitive uses, and through the prevention of new incompatibilities by planning, increasing public awareness, and enhancing locally adopted land use controls.

Since the issuance of the ANAP in 1976, aircraft noise has become a recognized factor in the planning process of many communities. Many local, state, and Federal agencies, in recognition of this fact, have developed regulations, guidelines, and procedures to deal with noise in the community land use planning process around airports.

A number of Federal agencies have published policies or guidance on noise (many without regard to its source) and land use. These agencies have done this for several different reasons—to carry out public law mandates to protect the public health and welfare and provide for environmental enhancement; to serve as the basis for grant approvals; and to integrate the consideration of noise into the overall comprehensive planning and interagency/intergovernmental coordination process.

Although several of these Federal programs include noise standards or guidelines as part of their eligibility and performance criteria, the primary responsibility for integrating noise considerations into the planning process rests with local government which generally has exclusive control over actual land use and development. Noise, like soil conditions, physiographic features, seismic stability, flood-plains and other considerations, is a valid land use determinant.

The purpose of considering noise in the land use planning process around airports is not to prevent development but rather to ensure that development is compatible with various existing and projected noise levels. The objective is to guide noise sensitive land uses away from the noise source and to encourage nonsensitive land uses where there is noise. Where this is not possible, measures should be included in development projects to reduce the effects of the noise.

Under Title I of the ASNA Act, the FAA has a responsibility to issue regulations that identify land uses which are normally compatible with various exposures of individuals to noise. It should be clearly recognized that it is neither the FAA's policy, nor within FAA's authority, to preempt the authority of state and local governments and airport proprietors concerning local land-use planning and zoning responsibilities. Title I of the ASNA Act does not constitute or confer Federal land use control authority or responsibility.

Planning land usage requires cooperation between local governments, local planning authorities, airport proprietors, special purpose districts, regional planning agencies, state agencies, and state legislatures. For a particular airport and its environs all of the factors unique to that situation must be considered. Additionally, when performing an assessment of compatible land uses around airports, the benefits should be weighed against the costs in order to develop those alternative actions or control measures that are most effective and that are realistically available for implementation.

Community involvement and public participation are critical factors in successfully assessing the compatibility/noncompatibility of various land uses. The goals, values, and developmental needs of the individual communities regarding land use should always be considered in the early (planning) stages of land use evaluation. Community involvement at this early stage is an invaluable aid in determining acoustical and nonacoustical factors which must be addressed when determining normally compatible land uses for individual communities.

Airport and Community Relationship

The airport and the community exert a number of important influences upon each other. Those influences may be generally classified as economic, social, and environmental. They must be taken into consideration during the process of developing a noise compatibility program. This program must also be integrated in to other applicable comprehensive plans for the community, county, metropolitan area, or region.

Economic Considerations

The airport and the community have an interdependent economic relationship which must be considered in the compatibility planning process. Although an airport's economic role in the community varies with size, it can be a significant employment center and often has adjacent commerical or industrial development which amplifies this role. This, in turn, affects housing location, streets, utilities, and resources. The airport is an entry port for air-traveling vacationers and business persons and provides cargo, mail, and emergency transportation services. In may instances, the size, location, and capacity of the local airport are major considerations in the selection of new sites by industries of regional or national stature. The airport is also a magnet for urbanization and an important shaper of the community's growth patterns. Conversely, the airport is affected by the economic posture of the community. Often the airport will be a publicly owned facility and may be dependent on local tax support. In such circumstances, the airport is dependent on support from local governments and citizens for revenue or general obligation bonds and for acceptance of Federal or state aid funds. The public's investment includes not only the obvious direct cost of the airport but also the opportunity costs, the expended social and environmental costs, the commitments and economic costs of private investment associated with the airport, and the costs of other public investments in the infrastructure needed by the airport in its present or proposed location. Thus, there is an extensive and complex interrelationship between the airport operator's action and its effect on the community and vice versa. That relationship is readily apparent in the need for airport noise compatibility planning by both.

Social Considerations

The airport plays several important social roles in the life of the community. An airport can be a principal transportation link for the community in terms of passenger carrying service and the movement of goods to and from the community. For smaller isolated communities, the airport also provides a vital emergency link for transporting the

critically ill and injured. The airport's influence upon the community's growth patterns, coupled with its possible traffic and noise impacts, affects the desirability of housing areas and, hence, the geographic aspects of the community's growth.

Environmental Considerations

Although noise is the most apparent environmental impact of the airport upon the community, there are others resulting from ground access and air and water pollution. Ground access to an airport by vehicular traffic is often an overlooked environmental impact of airports. Access routes can be designed to minimize pollution and community disruption. The airports' large open spaces can often have a beneficial effect upon the environment, allowing for dissipation of urban air pollution surface water percolation and visual relief from too much urbanization. Conversely, access routes to an airport simultaneously create the intra-structure necessary to urbanization and that has helped result in the development of incompatible land uses around airports.

Safety Considerations

Safety of flight operations and safety of the public must be overriding factors during the consideration of various schemes to achieve or improve airport-environs compatibility. This could include actions which relate to protecting runway approaches from any form of interference, such as towers, buildings, or power lines. Safety is a primary consideration in developing airport or flight operational changes designed to lessen noise impacts.

In framing this rule, the FAA recognizes that the objective of airport-land use compatibility planning and implementation is the achievement and maintenance of compatibility between the airport and its environs. Inherent in this objective is the assurance that the airport can maintain or expand its size and level of operations to satisfy existing and future demands for aviation services and that persons who live, work, or own property near the airport may enjoy a maximum amount of freedom from noise or other adverse impacts of the airport. Equally important is the protection of the public investment (both local and national) in a facility for which there may be no feasible future replacement. In other words, the FAA recognizes that the local communities and the Nation share vital interests in the economic viability of the airport and in the well-being of citizens around the airport. Toward these ends, the FAA has determined that it is best that noise compatibility programs be developed at the local level, subject to Federal review for considerations of national concerns.

Identification of Compatible Land Uses

Section 102 of the ASNA Act states, in part, that the Secretary of Transportation "after consultation with the Administrator of the Environmental Protection Agency and such other Federal, state and interstate agencies as he deems appropriate, shall by regulation * * * identify land uses which are normally compatible with varius exposures of individuals to noise." That rulemaking is required to be completed "not later than the last day of the twelfth month which begins after the date of enactment of this Act," that is, February 28, 1981.

In seeking to fulfill the requirements of that provision of the Act, the inherent inexactitude of land use compatibility guidelines was apparent as the FAA reviewed the available data. Though such documents have been developed and employed for at least the last quarter century, no body of scientific data exists that says with certainty that a specific land use, by every individual user, will always be compatible with a particular sound level above a conservatively low level. For that reason, there must be a value judgment made within a range of noise exposure levels generally associated with a given land use. The relative position of the compatibility interval is not defined finitely, usually only within 5 to 10 decibels of a specific norm level. The inexact nature of compatibility intervals is important to note in application of land use guidelines. Land use guidelines (even those adopted by regulation) are a planning tool and as such provide general indications as to whether particular land uses are appropriate for certain measured or calculated noise exposure levels. The FAA has used the recent American National Standard Institute (ANSI S3.23–1980) "American National Standard Compatible Land Use With Respect to Noise," (May 1980) as the starting point for identifying land uses normally compatible with various sound levels around airports. The following paragraphs of explanation are taken from that document:

The compatibility of various land uses with the outdoor noise environment at a site is dependent on factors such as the following:

(1) *Acoustical factors,* such as the sound level at the site and its variation with time; the sound isolation provided by the buildings where people experience the effects of outdoor noise; and the noise environment generated indoors by indoor sources, including sound produced by people themselves.

(2) *Nonacoustical factors,* such as the type of human activity associated with a specific land use; the differing responses of individuals to the same noise environment; attitudes toward the noise sources and the persons responsible for creating the noise; familiarity with an intruding noise through previous experiences; the disturbance of an activity or the annoyance caused by the noise; specific requirements of individual communities; the cost of achieving lower average sound levels; and the technical feasibility of reducing the sound levels.

As already stated, new Part 150 specifies day-night average sound level as the acoustical measure to be used in assessing compatibility between various land uses and an outdoor noise environment resulting from aircraft operations at, and in the vicinity of, an airport. The definition of the noise measure is exact and is specified with the same precision as any physical measurement of the sound. However, the assessment of the relation of land use to prevailing noise is less precise, in view of the nonacoustical factors mentioned above.

Appendix A of Part 150 contains land uses that have been identified as "normally compatible" with various levels of noise. Specifically, Table 2 contains ranges of yearly day-night average sound level for various land uses, reflecting the statistical variability for the responses of large groups of people to noise. Any particular value of day-night average sound level may not, therefore, accurately assess a particular individual's perception of an actual noise environment.

The values given in Table 2 (yearly day-night average sound levels that are normally compatible with residential land uses) are based on studies of noise-induced annoyance, including the ANSI standard cited above. Values specified for other land uses are based primarily on noise-induced interference with speech communication. The identified land uses are consistent with, but not identical to, various land-use compatibility recommendations of other Federal Governmental agencies, particularly the Environmental Criteria and Standards of the Department of Housing and Urban Development (24 CFR Part 51: 44 FR 40861; July 12, 1979) and the Guidelines for Considering Noise in Land Use Planning and Control assembled by the Federal Interagency Committee on Urban Noise (June 1980).

Table 2 was developed without consideration of the cost or technical feasibility associated with the application of specific day-night average sound levels at any particular community. Under FAR Part 150, compatibility of a land use with the outdoor noise environment is assessed

by comparing the predicted or measured yearly day-night average sound level at a site with values given in Table 2. The land-use categories are those usually associated with comprehensive or master plans that detail present and future uses of land. Adjustments or modifications of the descriptions of the land-use categories may be necessary in considering specific local conditions.

Table 2 includes several categories of land use in which the indicated activities are primarily carried on outdoors. Where secondary activities may reasonably be expected to occur (such as residences on farms or offices in factories), Table 2 provides guidance for determining compatible use for both primary and secondary uses. Identification of the use most sensitive to noise should be used for planning programs.

Administrative Process

An important aspect of both the EPA recommended rule and the petition from the Air Transport Association is the process for the FAA's receiving, evaluating, and acting on noise plans developed by airport operators. The requirements prescribed in Title I of the ASNA effectively resolve a number of issues inherent in those recommendations. Submissions to the FAA under Title I are voluntary rather than mandatory as recommended by both the EPA and the ATA. The FAA is required to provide a relatively prompt determination on specified criteria on major aspects of noise compatibility programs. The 180-day review period does not provide adequate time for formal, adjudicatory hearings on the programs, as recommended by the ATA. Further, a formal procedure is more time consuming and costly both to the Government and the parties. There is no indication that a formal process is necessary to achieve the objectives of the ASNA Act or that it would develop better reasons for the ultimate decisions on the programs. To the extent necessary, the Director may conduct informal, information-gathering sessions with interested persons who may have data that would help to develop a well-founded, reasoned decision. However, most programs should not need extensive, additional fact-finding processes because they will reflect the appropriate considerations in their development and statements of the program.

Part 150 describes the administrative process the FAA will follow when it receives a noise exposure map or airport noise compatibility program (and their revisions) in accordance with the requirements of the ASNA Act. As previously indicated, FAA's Director of the Office of Environment and Energy (the "Director"), on behalf of the Administrator, has the primary responsibility for administering the Part 150 airport noise compatibility planning program. The Director will coordinate any aspects of the noise program affecting other agency programs with the responsible elements in the FAA.

To facilitate prompt and adequate response to airport "noise exposure maps" and "noise compatibility programs," airport operators are required to submit them simultaneously to the Director and the Director of the FAA Regional Office (the "Regional Director") having jurisdiction over the geographical area in which the airport is located. (The additional submission to the Regional Director is necessary to ensure prompt notice to the local FAA field offices to avoid unnecessary delay in the 180-day review period leading to approval or disapproval of a program.) A noise exposure map and noise comptability program must be received by both the Director and Regional Director for it to be considered "received" by the FAA. Thus, the FAA will conduct its preliminary review and begin the 180-day approval period provided in § 104(b) of the ASNA Act when both have received the airport operator's noise exposure map and airport noise compatibility program.

The process provides for notice to the public of the receipt of each airport "noise exposure map" and "noise compatibility program" by publication in the **Federal Register**, identifying the airport involved and indicating whether, based on a preliminary review, the requirements for those submissions are satisfied. It provides a means for timely and thorough evaluation by the FAA of the measures presented in each program to ensure an informed and reasoned determination on whether that program should be approved. That decision is based on the program itself, information presented or developed during the evaluation, and other information available to the Administrator.

The administrative process does not include any adversary pleadings or proceedings in which interested persons submit their complaints, evidence, or arguments for a "record" of hearing as the sole basis upon which the Administrator's determination on a program will be made. Section 104(b) of the ASNA Act requires the Administrator to approve or disapprove each program submitted in accordance with the Act (except those measures relating to flight procedures) within 180 days after it is received or, upon failure to do so, the program is "deemed" to be approved. Except for those measures relating to flight procedures, the Administrator must approve a program that provides for its appropriate revision whenever the noise exposure map upon which it is based is, or will be, revised as required unless the measures to be undertaken under the program either—(1) would create an undue burden on interstate or foreign commerce or (2) are not reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Clearly; those decisions do not preempt local authority or responsibility for land use decisions. The nature of the evaluation involved and the relatively short time for issuing a determination do not lend themselves to a complex process. There is no reason to believe that a formal on-the-record type of proceeding would produce a better basis for the ultimate determination or that it could be accomplished in the required time frame. The letter and spirit of the ASNA Act can best be served by an informal, administrative process geared to the complexities actualy presented by the program in each case. Extensive fact-finding should not be necessary because those factors will be considered in developing the program and will be reflected in its noise control and abatement strategies.

Program measures relating to flight procedures for noise control or abatement purposes are treated separately from other measures under the ASNA Act, and the regulation, in view of their potential impact on air safety. Evaluation of those matters usually will be handled separately from other aspects of the program by referring them to the responsible FAA office or service. A separate determination on them for approvals and implementations will be made within an indefinite, but reasonable, time after receipt of the program. That determination will be based on all relevant policy and program areas of the FAA that would be affected by the particular measures provided in the program. While specific procedures, criteria, or standards covering the full, potential breadth of those matters cannot be prescribed in the general regulation, the FAA has numerous orders, handbooks, and other directives; advisory circulars; and technical publications that already provide criteria and guidance for those matters likely to be affected. If they are found to be deficient for purposes of making the necessary evaluations, they will be

supplemented as appropriate. Most airport operators are already familiar with those materials because of their previous experience with them at their airports. Those persons wishing more information on specific flight procedure or other measures should contact the local FAA Airport District Office, or the Air Traffic or Airport Division of the Regional Office, as appropriate.

Under the administrative process, the Director is provided broad discretion in conducting the evaluation to ensure there is ample opportunity for marshalling the facts, conducting the evaluation and developing a sound recommendation for the Administration's decision on the program. The process does not dictate rigid steps or procedures which will not likely provide background data, or insight necessary to adequately satisfy that responsibility. The Director will do whatever is considered necessary in the light of the specific program measures presented for evaluation.

An airport operator may revise or withdraw a noise compatibility program at any time before a determination is issued on that program by the Administrator; in addition, the Director may terminate evaluation of the program immediately upon notice of the intent to revise or withdraw a program. A revised program will be treated as a new program and a new 180-day review period will begin unless the Director finds that, in light of the overall program, the modifications can be evaluated separately and integrated into the unmodified portions of the program without exceeding the 180-day review period or creating an undue workload or expense to the Government. The Director will evaluate only one program at a time for any one airport.

Upon completion of the evaluation, the Director prepares and forwards to the Administrator, through the Chief Counsel, a recommendation for approving or disapproving the program together with the reasons for the recommendation and any terms or conditions that should attend the determination. Based on those recommendations and other available information, the Administrator issues a determination approving or disapproving the program. A determination is effective upon issuance and remains in effect until revoked, modified, or superseded or until the program is required to be revised. Provision is made for revoking or modifying previously issued determinations for cause following notice to the airport operator and an opportunity to respond to the reasons stated by the Administrator for proposing to modify or revoke the determination.

Discussion of Comments and the Rule

A. EPA's Recommended Airport Noise Regulatory Process

As previously stated, interested persons have been afforded the opportunity to participate in development of major aspects of this rulemaking by submitting written comments to the public regulatory docket and by participating in a public hearing on the EPA recommendation in Notice No. 76-24. The public hearing was held in Washington, DC, on January 17, 1977. The period for submitting comments closed March 4, 1977. All comments received have been reviewed and duly considered in promulgating this amendment.

Seventy-three public comments were received in response to Notice 76-24 (Docket No. 16729); ten supported the proposal and sixty-three opposed. The comments from some governmental bodies and individuals generally were the major source of support for the EPA recommendation; however, most governmental bodies and virtually all aviation associations, civic groups, and airport owners and operators opposed the recommendations. The two business corporations responding to the notice took opposite positions on the EPA's recommended airport noise rule.

The proposed assignment of specific responsibilities for local airport noise control planning and implementation to the local airport proprietor and the FAA received considerable support. The general consensus among those responding in support of the EPA's recommendation was that without a regulation to accompany the DOT Aviation Noise Abatement Policy, many airport noise problems will be overlooked, until they are beyond the point of simple or effective solution. Although a majority of individuals responding to the docket were in agreement that the development of noise plans by airport proprietors was a desirable goal, many specific and significant objections to individual aspects of the recommendations were raised. The primary objections were the proposed mandatory nature of the universal noise planning according to prescribed methodology and the coupling of noise planning regulations with airport certification. Twenty-one persons testified at the public hearing. All but two of those persons opposed or suggested modifications to the EPA recommendations. (It should be noted that the public also had opportunities for comment on the ATA petition for rulemaking in PR Notice No. 79-9 and to provide significant input to Congress during the legislative process that led to the enactment of Title I of the ASNA Act. As stated earlier, that statute resolves directly or indirectly many issues raised in the two FAA notices and in the comments submitted to the FAA Rules dockets on those notices.)

The analysis of comments to the EPA recommendation covers the areas of—economic considerations, appropriateness of incorporation with Part 139 certification, authority and responsibility, and technical considerations. These matters are discussed as follows:

1. Economic Considerations

Comments addressing the adverse economic impacts which the EPA proposal may have, if adopted, noted that the acquisition of land near an airport, for noise abatement purposes, is feasible in only the most severely impacted locations. To go beyond those areas, one commenter stated, would involve "too much land, too much money, and too much community disruption." The feeling that land acquisition for noise abatement purposes was an extreme measure to be employed in the most critical cases was not universal. One municipality indicated, "if a noise abatement program is instituted, then an improvement in the environmental considerations will bring about a positive effect on the economic value of the land." However, the commenter indicated that an EPA proposed provision (relating to the mitigation of every possible impact which may have an adverse effect on the economic value of land around the airport) should be modified to indicate that no approval of funding can be permitted for solely improving the economic value of land. Another municipal authority indicated that "it would be virtually impossible to separate the health and welfare boundary from the issue of adverse economic impact on the value of land." The assumption was that anything which is adverse to the health and welfare of citizens would have some effect on the economic value of the land.

Several commenters addressed the funding of the plans. One objection frequently voiced was that the proposal does not identify who would pay for development of abatement plans. One commenter added, "the cost of the preparation of such plans will be excessive for the small or nonhub airports." The FAA agrees in part. The mandatory noise abatement planning process proposed by EPA would be of

marginal benefit at those airports that either may not have serious noise problems and would impose an unnecessary cost burden on those airports with no present or anticipated noise problem. However, in adapting the EPA recommendation to the voluntary program under the ASNA Act, the cost burden is minimized.

The Airport and Airway Development Act Amendments of 1976 (Pub. L. 94–353) authorized for the first time the use of Federal airport development funds on projects designed to achieve noise relief. Specifically, § 11 of the Act authorized Federal financing of land acquisition to ensure compatibility with airport noise levels and the acquisition of noise suppression equipment. Further, in fiscal year 1977, the FAA initiated a program to encourage the preparation of comprehensive noise abatement plans by airport proprietors through the planning grant program of the Airport and Airway Development Act. Section 103(a)(2) of the ASNA Act has extended the role of the FAA in assisting in the funding of noise abatement planning by providing that "* * * the Secretary may make grants of funds for airport noise compatibility planning to sponsors of those air carrier airports whose projects for airport development are eligible for terminal development costs * * *"

The EPA proposal also contains provisions requiring full and timely implementation in accordance with a noise abatement plan. The penalty for failure to comply would be the loss of airport certification and a potential cutoff of Airport and Airway Development Program (ADAP) grants. Termination or suspension of an Airport Operating Certificate (AOC) is not an effective or practical enforcement device for airport noise abatement planning or implementation. By law, terminating an AOC would stop all CAB-certificated air carrier operations at the airport, as well as most other business and personal aviation activities. Consequently, the benefits to the community and the nation from the existence of the airport would be severely constrained, if not completely cutoff. The economic impact in terms of the movement of people, cargo, and mail would also be immediate and severe but could vary from airport to airport. Such action could have substantial local, regional, national, and international implications for air transportation. Those effects negate the viability of mandatory noise certification of airports.

Among the various mechanisms for noise reduction under the proposal, the use of landing fees based on performance specifications drew many comments. It was the general concensus that landing fees are an attractive enforcement procedure available to the airport proprietor. A submission to the docket from the Council on Wage and Price Stability proposed a special surcharge on airline landing fees pegged to the amount of noise the aircraft make. The Council asserted that "a noise abatement program that includes noise-charge incentives offers several real advantages as compared to a program that relies more exclusively upon regulatory controls." They conclude in summary that—

(1) As a practicality, the addition of noise charges by the airports could accomplish more abatement than regulations and land use controls alone could achieve. This is true because a cost effective and comprehensive abatement program would be difficult to establish without the help of economic incentives that make it profitable for the carriers to take the initiative. In addition, far from conflicting with Federal noise regulations, economic incentives should promote compliance with both airport regulation and Federal aircraft noise standards.

(2) The unique contribution of noise charges would be to make it profitable for the carriers to themselves search for the lowest cost per unit of abatement they can devise. Lower costs per unit of abatement will help to reduce inflationary pressures as well as increase abatement efforts.

(3) Noise charges could be administered by impacted airports with minimal Federal oversight and would reduce the pressure to add overly specific and restrictive Federal regulations of carriers and airports.

The Council on Wage and Price Stability stated that noise charges offer a promising approach to noise control which could be implemented by airports under the support and guidance of the FAA and EPA. Their recommendation to the FAA was that a comprehensive study of how such a system could be implemented and how the FAA might facilitate local initiatives should be undertaken. The FAA concurs in this recommendation and has started such an in-depth evaluation. However, we view this effort as separate from resolution of the issues raised in Notice No. 76–24 and the ASNA Act. Concerning the imposition of user charges, two problems must be recognized. Many airports have revenue bond obligations that prohibit or limit the ability of the airport operator to levy special charges, and there is doubt whether or not the imposition of noise charges can be effectively implemented in the absence of further clarification of this problem. Further, § 18(a)(1) of the Airport and Airway Development Act of 1970, as amended in 1976, requires "substantially comparable" fees to be charged. This has not been controversial to date but could present a problem in future application.

One question raised concerning the proposed rule was whether all certificated airports would be required to purchase, install, and operate noise monitoring systems without the considerations of cost and benefit. The cost of such a system is approximately $200,000, and the total number of airports which could possibly be affected is about 500. One commenter inquired if the equipment cost and operating costs would be financed in part through the ADAP program; however, FAA's authority to provide grant-in-aid and financial assistance under that program has expired. The ASNA act provides for the grant of funds to carry out noise compatibility programs prepared in accordance with the Act. Therefore, certain funding for noise monitoring equipment is unclear. Nevertheless, the development and implementation of noise abatement plans does not require noise monitoring equipment.

2. Appropriateness of Incorporation with Part 139 Certification

The vast majority of persons opposing the EPA proposal indicated that the use of the airport certification program to enforce a noise rule would be unreasonable and a gross misuse of the certification program. Other adequate means of enforcement are available which do not have such far reaching direct and indirect effects. One individual commented that he could not see the logic of connecting the airport certification program to the EPA's proposal, which deals exclusively with an environmental problem, because noise has no affiliation with safety or other objectives of airport certification and should not be consolidated in the certification program. The FAA is in basic agreement with this comment, but notes that all certificates issued under Title VI of the FA Act are for safety and security but may be subject to noise considerations under § 611 of the Act. The proposal, as submitted by EPA, would make the Airport Noise Abatement Plan a part of the Airport Operating Certificate (AOC). Failure on the part of the proprietor to administer the plan would, under the EPA recommendation, be cause for suspension of the Part 139 certificate with the consequences associated with that suspension.

FAR Part 139 is an airport safety and security regulation which places specific requirements on the airport proprietor related to those matters. An AOC is issued when the airport is in compliance with these requirements. Within the boundaries of an airport, noise from operations at that airport can only be effectively mitigated through modification of the source (the airplane/engines), specification of airspace procedures, or incorporation of sound barrier techniques. The FAA never intended to include those with the airport safety or security requirements under FAR Part 139. Part 139 is not the proper vehicle for implementation of an airport noise abatement planning program. The airport certification program under Part 139 is intended to focus on safety and security and this focus should be maintained and not in any way be diluted. The incorporation of noise planning requirements under Part 139 could lead to the dilution of airport noise programs as well as airport safety and security. That could also act as an "open door" for further add-on programs to Part 139 in the future. The integrity of the original scope and intent of Part 139, and other Title VI certificates, should be kept in mind, and the precedent of attaching extraneous subjective and controversial conditions to the Airport Operating Certificate should be entered into only with the greatest care and demonstrated need. The ASNA Act does not provide a basis for mandatory noise planning but for voluntary development and submission of programs under a standardized Federal program. Thus, the objectives of the Act can, and should, be achieved fully without engrafting noise compatibility planning to the airport operating certificate.

Considerable disagreement exists as to the blanket nature of the EPA recommendation which would apply to all Part 139 certificated airports instead of focusing on only those airports with identified existing or potential noise problems. In general, most negative comments asserted that a more selective approach should be employed. One airport authority indicated that the proposed rule should be modified to eliminate the requirement that a noise abatement plan become a part of the FAR Part 139 Certificate for all certified airports, and that actions such as those contained in the proposed rule should only be imposed on the major airports throughout the nation that currently have aircraft noise problems or that are expected to have them in the next 20 years. The EPA response to such arguments is:

> The position of the FAA and a substantial number of airports seems to be that airport noise abatement planning should not be undertaken until an airport has a noise problem. To do otherwise, would merely create a noise problem where none existed. EPA is convinced that it was, and is precisely this kind of approach that has resulted in the present airport noise problem. Planning is designed to prevent a noise problem from arising. If airports wait until they are encapsulated with noise impacted noncompatible land use, the benefits to be achieved from airport abatement planning will be greatly diminished.

The FAA disagrees with the EPA's assumption that FAA condones delaying adequate and appropriate noise compatibility planning. A major difference in the approach to the problem between the two agencies is the Federal Government's proper role in, and the means for, that planning and implementation.

The EPA proposal would require each airport holding an AOC to submit a plan. Each airport proprietor involved would be required to expend a relatively significant amount of time and money to meet the proposed regulation, including implementation of the plan as submitted. A total of 729 airports have been certificated under the AOC Program. There are 481 listed as having scheduled service by CAB-certificated air carriers. Many of these airports do not have a noise problem, nor is a significant noise problem anticipated. For those airports, the imposition of mandatory Federal requirements, as recommended by the EPA, are not economically reasonable. At the same time, there are noncertificated airports serving general aviation which also have significant noise problems. Part 139 does not apply to these other airports and, thus, the EPA proposal would not apply. A case-by-case approach appears more appropriate than an across the board rule for all airports within a given category. The former approach is taken in the ASNA Act even though it too does not apply to airports without air carrier service. In that regard, the FAA is expanding the opportunity to develop and submit airport noise compatibility programs under Part 150 to most public use airports electing to do so. In so doing, the benefits of that planning can be realized by most airports having or expected to have, significant noise problems.

3. Authority and Responsibility

Another concern expressed by respondents to the notice was the requirement that the airport operator must develop compatible land uses around the airport. Many individuals indicated that this requirement ignores the fact that many airport operators have little or no land use authority outside the airport boundary. The FAA agrees that questions exist regarding the feasibility of that aspect of the proposal since implementation of the plan would be required of certificated airports while the airport operator may lack authority to act in many areas to achieve full compliance. For example, the airport operator may not be in a position to impose land use restrictions or to condemn property, even though he recognizes the need for those restrictions as part of a comprehensive noise control plan. In this respect, the EPA recommendation fails to accept the institutionalized realities of local land use structures and limitations.

The State of California, Department of Transportation, expressed concern over the effect of statutory delegation of responsibility for noise abatement to the airport operator since such a policy might increase the airports' legal liability for noise and further complicate the progress of noise abatement. Their statement indicated:

> The Federal policy (on noise abatement) recognizes that airport proprietors today are legally responsible for the effect of aircraft noise on the surrounding community. The Federal Government has yet to assume this liability. This being the case, we believe the Federal Government should move cautiously in undertaking an authority to direct proprietor actions while at the same time leaving liability with the proprietor.

A number of comments received indicated that many of the noise abatement actions which the proposal recommended fall into areas which are historically and legally outside the control of the airport proprietor. One airport proprietor remarked:

> The paradox of the entire situation as being proposed is that in the absence of any airspace use plan, consistent and congruent with the airport operators' Airport Noise Abatement Plan, there can be no legal Airport Noise Abatement Plan. If you cannot insure to the public that you can confine the various noise levels within the boundary lines of the Noise Abatement Plan, you cannot then, at the local government level, substantiate or enforce land use controls of any configuration or type. Again, it should be obvious even to the novice that noise levels and patterns are going to be directly associated with the flight and path of the noise maker, the aircraft. The airport operator, consequently, under the proposed rulemaking, is confronted with being placed in the ridiculous position of establishing geographical boundaries for the confinement of noise levels to protect the public health and welfare when he has no legal capability to confine or control the noise to the designated area, and by the absence of such legal ability he invalidates the local police powers that are available to him.

These comments indicate, as pointed out in the 1976 FAA policy statement, that the control of airport noise is a complex issue with several parties sharing responsibility. A reasonable airport noise program must reflect the reality that noise abatement responsibilities are properly apportioned among Federal, state, and local authorities, as well as airport authorities according to the nature of their authority, and that progress is accomplished through incentives and technical support by the Federal Government.

While the FAA has the statutory responsibility with respect to flight procedures that may be appropriate within the immediate vicinity of the airport, the airport operator can propose preferential runway usage, traffic pattern configuration and other operational techniques to the FAA. Determination of appropriate flight procedures requires careful consideration by FAA since airspace management and aviation safety are involved. The airport owner should retain the initiative to develop local airport noise compatibility plans, subject, however, to review and concurrence by the FAA regarding those aspects of the plans concerning areas of Federal authority and interest.

As pointed out by other comments, state and local governments and planning agencies must retain the authority for land use planning and development, zoning, and housing regulation that will limit the uses of land near airports to purposes compatible with airport operations. The FAA agrees. However, the EPA proposal does not recognize zoning as an effective form of land use control. That position is not wholly consistent with § 18(a)(4) of the Airport and Airway Development Act of 1970, as amended, or the spirit of the ASNA Act which reflects local autonomy in the exercise of those matters.

One municipality expressed great concern over the timing of the proposed regulation and its interface with the Aviation Noise Abatement Policy issued by the Department of Transportation, the retrofit regulations, and noise legislative proposals then pending in Congress. The FAA agrees that there was some question regarding the timing of this rule when Notice No. 76-24 was submitted, since the voluntary program contained in the DOT/FAA Aviation Noise Abatement Policy had just been initiated. However, since that time, 45 airports have received grants for developing noise plans. In addition, the recently enacted ASNA Act requires the promulgation of regulations establishing specific methodologies and units for use in measuring airport noise and noise impact, and identifying compatible land use around airports, while also providing for the voluntary submission for review and approval of specific elements of airport noise plans. That Act and, thus, this implementing regulation, do not alter the distribution of authority or responsibility or preempt local initiatives in noise control planning and implementation.

4. Technical Considerations

The EPA proposal indicated that the Airport Noise Evaluation Process (ANEP) has the very important quality of providing for the display of the relative effectiveness of various noise abatement actions in a form which is understandable to both technical and nontechnical persons. The FAA disagrees. The methodology employed by the EPA to provide the display is itself very difficult to explain to persons without technical training. The ANEP methodology recommended by the EPA is based on the use of the Day/Night Average Sound Level (L_{dn}) cumulative event noise unit system. The methodology is used to determine a series of indigenous noise impact areas. The stated objective of this concept is to determine the incremental extent and severity of aircraft noise above ambient noise and the effectiveness of noise impact reduction options. The EPA method included the use of the aircraft noise level (L_A), community background noise level (LCB), and the population density of the study area. The use of "noise units" as a measure of impact (as defined in the proposal) is extremely complicated. That complexity reduces understanding of the relationship between specific causes of annoyance and effect of abatement options. The community background noise level is defined as the logarithmic summarization of indigenous noise levels (LI) and contributions of specific residential sources (LORS), such as limited access highways, etc. The methods and procedures used in estimating the categories of community background noise levels appear weak and are not convincing. The total noise (LT) consists of the logarithmic summation of LCB and L_A. The EPA has, however, in explaining the use of ANEP said:

"EPA's ANEP serves to merge two professional fields (aircraft noise prediction and urban land use planning based on census/demographic data) of interest to develop an aircraft noise prediction which is presented in a land use oriented format. This process was specifically formulated to bring together aircraft noise prediction and land use planning since solutions to the airport noise impact problems must reflect a balance of aviation and land use options. Therefore, considering the process includes both aviation noise, as well as, land use, it is not difficult to understand why some persons who have specialized in one or the other of these fields might view it as being 'complex.' As a matter of fact, EPA's ANEP has been illustrated to a number of private consulting firms, government agencies, and informed individuals in both the aviation noise and urban planning fields who have commented favorably on the feasibility of this approach. In addition, the methodology has been used by at least three consulting firms, two Federal agencies, and several individuals with no major problems. Perhaps much of the comment on the complexity of the ANEP would disappear if (a) its operations were explained, with examples, in an education setting and (b) its use becomes more widespread; EPA intends to pursue both of these courses."

The Acoustical Society of America did not, however, find the ANEP methodology as acceptable as the EPA did. They indicated:

"It would be feasible both to calculate and to monitor the day/night average sound level due to aircraft only, along the line surrounding an airport providing the boundary is within a few miles of the runway. But it would not be feasible for a boundary line many miles away. It is not at all evident that the noise along the airport boundary would necessarily be related to a 'community impact,' if people do not work or live along that boundary. The meaning of community impact boundary level is not really evident from the definition presently given. It would be impractical either to measure or to calculate the indigenous sound level, as defined in the proposed regulation because a major research (effort) would be required at each location * * *"

The Society concludes that the EPA goal of designing and developing a process which has the important objective of providing various noise abatement actions in a form which is understandable to both technical and nontechnical persons, has not be attained. The FAA agrees that the ANEP, as proposed, does little to improve the understanding of the methodology or the state-of-the-art. On the other hand, the FAA also agrees with the EPA that consideration of ambient noise levels is important in evaluating the true impact of noise from any particular source. Thus, the FAA plans to issue supplementary guidance material on the recommended techniques for considering ambient noise.

A simpler method can be more readily used, provide more flexibility, and be just as effective for airport noise compatibility planning. As described above, new Part 150 uses two of the

units proposed by the EPA: A-Weighted Sound Level (L_A) as the single event maximum sound level unit system and Day-Night Sound Level (L_{dn}) as the cumulative noise unit system. Further, it provides for the use of a computer-based mathematical program, such as the Intergrated Noise Model (INM), for developing standardized noise maps and predicting noise impacts.

Using a program such as the INM, L_{dn} contours around an airport can be developed and the predicted noise impact assessed. The resulting noise map would help identify noncompatible land uses and provide a basis for developing a noise compatibility program. The detail of further noise analysis depends upon individual airport problems, local community needs, and any state or local government requirements. It is the intent of the FAA to allow the maximum flexibility in the approach to noise compatibility planning consistent with the ASNA Act, including the goals of confining, insofar as possible, severe aircraft noise exposure levels to the areas included within the airport boundary or over which the airport has a legal interest, of precluding development of noise sensitive areas around the airport, and of reducing substantially the number and extent of noise sensitive areas in the vicinity of airports that are subject to significant noise exposure.

On concern expressed by numerous persons was the timing of requirements contained in the proposal. One airport proprietor expressed his views as follows:

"Requiring the airport operator to identify airport noise level boundary lines within 120 days is wishful thinking on someone's part. Also, to produce a meaningful agreed upon Noise Abatement Plan (other than a paper exercise) within approximately twelve months is wishful thinking. It will take at least two and more likely three years, plus forced delays. The requirement of implementation shows a complete ignorance of local government police power, notwithstanding the fact that (up-dating) the average Airport Noise Abatement Plan every five years would put the airport operator in the position that he would hardly get through with one plan before he would have to start on its replacement."

The FAA agrees that the careful development of a noise map and a meaningful compatibility program can take a considerable amount of time which may vary depending on the size of the airport, the magnitude of the noise problem, the cooperative efforts of all local authorities, and other local factors. Therefore, a fixed schedule has not been specified but airport operators submitting a noise compatibility program will be required to submit their own schedule for revising it, with supporting justification, for FAA approval.

As previously discussed, the ASNA Act specifies a voluntary system of planning while the EPA's recommendation called for a mandatory program under airport operating certificates. The goals of the EPA's recommendation can be achieved without mandatory actions if noise impacted, or potentially impacted, airports participate in the airport noise compatibility planning under Part 150. The FAA and the EPA urge that 40 to 60 of the major airports submit maps and programs, or at least indicate their intent to do so, during the first year following adoption of this interim rule. That level of activity would be indicative of the success of the ASNA Act in obtaining noise abatement planning where it is needed on a voluntary basis. It would also help provide the information base needed to determine if this interim rule should be continued as adopted or should be modified in some way.

In consideration of the foregoing, under section 611(c)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1431(c)(1)), as amended, the FAA has determined that it should adopt the EPA recommended regulation, as modified, to reflect, among other things, the requirements and spirit of Title I of the ASNA Act. The FAA has consulted with the EPA and the Secretary of Transportation concerning this decision as contemplated by § 611.

While the EPA indicated that it still prefers a mandatory program for developing and submitting noise exposure maps and noise compatibility programs, it acknowledges the potentially valuable contribution of the Part 150 program in reducing and controlling airport noise impact problems. The EPA supports the issuance of Part 150 as an interim rule to facilitate later modifications based on the initial experience with its use.

B. ATA Petition For Rulemaking: Airport Noise Abatement Plans

Docket No. 18691 was established to receive public comments on the petition for rulemaking submitted by the Air Transport Association published as Notice PR-79-9 (44 FR 52076; Nov. 5, 1979). The majority of 37 respondents to that notice opposed the ATA petition with several indicating that it could create more problems than it solved. Comments were received from governmental units, civil associations, businesses, and private citizens.

Most of the favorable comments revolved around a number of specific issues. A number of commenters thought that the proposed rule suggested by the ATA petition should not be limited to airports holding operating certificates under Part 139 (air carrier airports), but be extended to cover certain general aviation airports.

One commenter indicated that the effects of airport noise abatement regulations adopted on a local level had their most serious effect on the nonscheduled airline fleet. Therefore, he recommended that the petition be approved. Another, claiming that use restrictions at general aviation airports were due to political considerations, made the same request. A third commenter expressed the fear that local ordinances could force many general aviation airports out of business.

Without expressing any opinions as to the validity of the reasoning behind such expressions, the FAA does, nevertheless, agree with the goal of these commenters, which is the maintenance of a strong and viable national aviation system including adequate local airports for the Nation's 190,000 general aviation aircraft.

The program to be implemented in Part 150 of Title 14 is voluntary. Public Law 96-193, signed into law by the President in early 1980, required establishment of a voluntary program that would be available to air carrier airports, but said nothing regarding general aviation airports. Since the ASNA Act did nothing to limit that authority to specified air carrier airports, the FAA has determined to extend the voluntary program to "public use" nonair carrier airports, other than those that are used exclusively for helicopters, as discussed elsewhere in this preamble. The FAA recognizes that there are few nonair carrier airports with serious noise problems at this time. However, experience has shown it best to eliminate noise problems before they arise.

Many of those favoring the ATA proposal were troubled by the increasing number and variety of local restrictions to which they were subjected in the operation of their aircraft. The comments of Hughes Air Corporation, d/b/a Hughes Airwest, reflect this concern.

The Hughes' comment stated that where a proprietor adopts an operating rule, he cannot be expected to have necessarily assessed "the consequences of its rule on a national basis without (FAA) support and in the face of an inflamed citizenry." The commenter expressed dismay at the passive role of the FAA in the process.

Another commenter, the Air Line Pilots Association, described "randomly generated complexity brought about by untried local arrival and departure routings, climb and descent profiles, noise limitations, and curfews * * *"

While the FAA does nor agree with these characterizations, it has a responsibility, under the ASNA Act, to set national standards applicable to the measurement and evaluation of airport noise. That can best be done through the adoption of the new Part 150. Adoption of this part by the FAA will facilitate a more organized process for the early review of the impacts of proposed local actions on interstate and foreign commerce.

Those favoring the ATA petition pointed to what they regard as excessive litigation that may arise in cases of local control. Typical is the Hughes statement which notes that any rules perceived as onerous will most likely end up being the subject of litigation. That this will happen independent of a preliminary agency determination was troublesome to Hughes. However, the commenter did not have benefit of the ASNA Act at the time this comment was being prepared. Since the law now contemplates a prior review of interstate and foreign commerce issues for those actions proposed under Part 150 programs, that concern in large measure is alleviated under Part 150.

The Oregon Department of Environmental Quality viewed the same issue in a totally different light. Opposing the ATA petition, the commenter stated that the effect of the petition would be to shift the forum for analysis of constitutional questions with respect to abatement plans from the courts to the FAA. The Oregon DEQ indicated that the judicial branch is the more correct forum for the resolution of such disputes, and that protracted litigation results in alerting all affected parties to the nature of their responsibilities.

The Airport Operators Council International (AOCI) was troubled not by the choice of forum in which disputes would be resolved, but by the standard of judicial review that would be in effect in the chosen forum. AOCI stated that the burden of proof is currently on those challenging a proposed local action. The ATA petition, they argued, could restrict Federal Courts of Appeal by allowing them to determine only if the Administrator met due process requirements in ruling on a proposed action; thus, Federal court review of a proposal on its merits would be precluded.

In accordance with the ASNA Act, Part 150 adopts a program that requires review by the FAA but that does not preclude resort to the courts on any finally determined issue, because final decisions of the Administrator are subject to judicial review of the determination and the record of the supporting process and recommendations. That should meet the concern expressed by AOCI and others.

A most difficult area is that of Federal preemption in the field of aviation noise abatement. The ATA petition advocated preemption to the extent necessary to ensure that the FAA's partners in aircraft noise abatement—airport operators and state and local governments—do not interfere with the authority of the Federal Government (44 FR 52080–81).

Clearly, to date this area of interaction between airport operators and Federal, state and local Governments has been less defined by specific Federal actions than by court decisions. The theme of that lack of clarity was much repeated by commenters supportive of the ATA petition. The Chicago Association of Commerce and Industry, in its comments, notes the absence of "clearly defined Federal preemption." Writing that a variety of noise abatement plans at state and local levels may have serious detrimental affects on the national air transportation system, the commenter calls for FAA approval of plans imposing restrictions on aircraft operators. Hughes Air Corporation states that the Congressional mandate expressed in the language of the Airline Deregulation Act dictates preemption in this area. The New York State Department of Transportation refers to FAA review of airport noise abatement plans prior to their adoption as "an inescapable Federal responsibility."

Many of those opposing the ATA petition preferred to view the preemption question in terms of potential liability. Air California, for example, noted that, if Federal preemption is proper in the area of noise abatement plans, then it is not fair to free the Federal Government from liability and impose it on the local proprietors. In the words of Air California, "It seems obvious to us that rights and responsibilities must go hand in hand."

One private citizen wrote that a right of the locality is preempted when a national judgment, concerning what degree of service should be made available and what environmental destruction will be allowed, is substituted for the local judgment.

The FAA is cognizant of all of those arguments. Part 150 is intended to come to terms with them. It endeavors, within established limits, to leave a substantial degree of decisionmaking to the local airport proprietors/operators. Nevertheless, it recognizes the importance of a noise abatement policy with some degree of uniformity; thus § 150.15 of Part 150 gives the Administrator discretionary power in conducting the evaluation of a noise compatibility program and approving the programs in accordance with the ASNA Act. The process permits maximum consideration of both national and local interests.

The concerns of Air California, previously discussed, are repeated frequently by those opposing the ATA petition. The City of Long Beach, California, believed that the ATA program presents airport proprietors with a serious dilemma: "On the one hand [they are] exposed to liability and damages for airport noise, yet on the other hand, [their] authority to adopt effective noise abatement measures would be greatly hampered by a cumbersome administrative review procedure which has the effect of a national referendum." Those fears should be reduced under Part 150. The unwanted liability of local proprietors should not arise in the cases in which the proprietors participate in the voluntary program established by Part 150. The submission of noise exposure maps will not in itself subject an operator to potential liability. The incentive for participating in the program is the fact that potential suits are less likely to be filed after the submission of the noise exposure map. In fact, one provision in the ASNA Act (§ 106) precluded the use, as evidence, of any noise exposure maps and related information or the land uses identified as compatible and noncompatible. Section 107 grants immunity to airport operators participating in that program from damage claims of subsequent purchasers in the area, unless significant changes in specified airport operations occur after the map is published. Finally, under the ASNA Act, certain Part 150 participants are eligible for Federal grants to study alternatives to solve noise problems.

While some commenters favored the ATA proposal because there is a need for a uniform system of regulation, some opposed it because no national system of regulation can adequately deal with problems that are unique to a particular locality. The latter perception appeared to be grounded, in part, in a belief that the ATA proposal totally disregards

local interests and concerns. The Massachusetts Port Authority comment refers to the proposal as being "wrong on the facts, wrong on the law, and wrong as a matter of sound public policy." New York's Senate Transportation Committee goes beyond mere objection, to propose an alternative. That body proposes a program that requires airport proprietors to develop aircraft noise reduction programs, while supplying them with financial and technical assistance for that purpose.

Citing *British Airways* v. *Port Authority of NY and NJ,* 564 F. 2d 1002 (2d Cir. 1977), the City of Newport Beach, California says that an airport operator's knowledge of local conditions and his ability to acquire necessary property and easements makes him the proper force for dealing with airport noise.

Part 150 attempts to reconcile legitimate local and Federal interests that are illustrated by the commenters. By encouraging airport operators to construct and implement noise abatement programs, the ASNA Act recognizes the special knowledge that a local proprietor has about particular situations in the community. But in retaining Federal control of the process in the requirement for review and approval or disapproval of programs by the FAA, the ASNA Act recognizes that any plan is but a part of a whole U.S. national air transportation system. The FAA, under the ASNA Act, is responsible for considering that system's independent parts and reviewing them as a whole.

The FAA also notes that if it were to adopt the ATA approach to airport control, it would shift the focus from the local to national scene which would have the unfortunate effect of discouraging air carriers and other aircraft operators from fulfilling their responsibilities of working cooperatively with airport operators at the local level as envisioned by the 1976 DOT/FAA Aviation Noise Abatement Policy and the ASNA Act. It would also tend to heighten the conflict between local and national authority by effectively "readjudicating" the local efforts at the Federal level in formal proceedings. The Federal bureaucracy would have expanded to staff the necessary program, including the employment of potentially a significant number of administrative law judges or other hearing officers to conduct and preside over the proceedings. Such a process for evaluating airport noise compatibility programs is not necessary to ensure an adequate review and determination on the matters presented.

In consideration of the foregoing and the effect of this amendment, the FAA has determined, in accordance with Part 11 of the Federal Aviation Regulations, that it should deny the petition for rulemaking from the Air Transportation Association to the extent that it is inconsistent with this amendment.

Section-by-Section Analysis of the Rule

The interim rule establishing the FAA's "Airport Noise Control and Abatement Planning" program is prescribed in a new Part 150 to the Federal Aviation Regulations (14 CFR Part 150). The new part consists of three subparts and two technical appendixes described as follows:

Subpart A—General Provisions

Section 150.1 is entitled "Scope and purpose" and contains the general description of the new part, including the implementation of statutory requirements and the FAA's process for receiving and evaluating submissions to it from airport operators.

The applicability of new Part 150 is specified in § 150.3. As prescribed in the ASNA Act, it covers the airport noise control and abatement plans of operators of certificated, air carrier airports whose terminal development projects are eligible for specific grant-in-aid funding. It does not, at this time, cover airports used exclusively by helicopters (heliports). Further evaluation concerning the noise implications of those heliports on the community is needed before the FAA can, with confidence, provide the technical and other assistance to the operators of those airports. Comments, information, and suggestions are specifically invited on this matter excluded in the interim rule. If appropriate, heliports not operated in conjunction with airports for other aircraft may be added to Part 150 at a later date. In addition, the FAA is extending a similar opportunity for FAA technical assistance, evaluation, and determinations to operators of most other public use airports who comply with the requirements of Part 150. The FAA will receive and evaluate submissions of noise programs from any of the covered airports in order to provide the benefits of the planning, evaluation, and FAA advice to those airport operators wishing to participate. By so doing, the rule covers approximately 2,800 airports rather than only the 729 or so airports covered by the ASNA Act. While priority of handling must be accorded those covered by that Act, the FAA should be able to provide prompt and comparable attention to all operators of Part 150 airports. However, submissions for those additional public use airports are not accorded, by the ASNA Act, the legal benefits granted eligible air carrier airports. The ASNA Act does not cover those airports.

Part 150 implements Title I of the ASNA Act by providing for airport noise compatibility planning, including land use programs, necessary to the purposes of those provisions. That Act does not in any way interfere with established prerogatives of State and local governments concerning land use and related noise compatibility actions and responsibilities. Accordingly, approvals and disapprovals of programs submitted to the FAA under Part 150 do not constitute a Federal determination that the use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses remains with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined noise assessment procedures or land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

Section 150.5 specifies the limitations of Part 150. It states that the FAA makes no determination under Part 150 on the acceptability of particular land uses under Federal, State, or local law in any specific airport environments. The FAA approval of a proposed airport noise compatibility program, as required by § 104(b), relates to the program as a whole, when the measures undertaken by the program "are reasonably consistent with obtaining the goal of reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses." Those approvals also do not determine that all measures covered by the program are eligible for Federal grant-in-aid funding. Neither do those approvals confer authority for, or direct, any implementing action. If subsequent Federal actions are necessary to implementation of a program, a specific request for those actions will be required. During review of any proposed action requested, the appropriate environmental assessment of that action will be made.

Section 150.7 prescribes the definitions of certain terms used in Part 150. Other special usages of terms are provided in those appendixes in which the term appears.

The word "airport" is defined to cover any area of land or water that is normally used or intended to be used for the landing and takeoff of aircraft (the Part 1 definition generally applicable in the FARs), other than those used exclusively by helicopters, if that airport—

(1) Has a valid operating certificate issued under § 612 of the FAA Act of 1958, as amended (currently Part 139);

(2) Is eligible for grant-in-aid funding of terminal costs under § 20(b) of the Airport and Airway Development Act (currently FAR Part 152) whether or not it is served by certificated air carriers; or

(3) Is open to use by the general public, without prior authorization of the airport operator being necessary to use the airport.

A Part 150 "airport operator" is that person who holds a valid airport operating certificate issued under § 612 of the FA Act for that airport or, for uncertificated airports, the person who has the operational control of, and responsibility for, an airport covered by Part 150.

Section 103 of the ASNA Act contains the provisions for airport operators to voluntarily submit "noise exposure maps" to the Administrator after rules become effective that designate the necessary systems for measuring airport noise and determining the exposure of individuals to that noise. The implementing description and content requirements for those maps are prescribed as a definition under § 150.7 and indicate the required depictions of the airport and surrounding areas, including noise exposure contours, political subdivision boundaries, and land use areas not normally considered compatible with the airport noise exposure levels outdoors at those locations. The definition references Appendix A of Part 150 which describes the required methodologies and procedures for developing noise exposure maps. It should be noted that those maps include an accompanying description of the projected aircraft operations at that airport during 1985 and, if submitted after 1982, during the fifth year after submission of the map, together with the ways, if any, in which those operations will affect the map.

For purposes of Part 150 noise planning, "compatible land use" means the use of an area of land that is identified in accordance with the regulatory implementation of § 103 of the ASNA Act as being "normally compatible" with the outdoor noise environment at that location. Various land use categories are thereby associated with the outdoor, yearly day-night average sound levels that have been found not to routinely interfere with the activities connected with that or a similar use of the land.

Section 104 of the ASNA Act prescribes the general nature and content requirements of an airport "noise compatibility program" that an airport operator may develop and submit to the Administrator if an acceptable noise exposure map has been submitted. Section 150.7 contains the definitional aspects of those provisions of the ASNA Act and references the methodologies and procedures for developing those programs specified under Appendix B of Part 150.

Several technical noise terms are defined in § 150.7 because those terms are essential to airport noise measurements and noise compatibility planning. The terms "average sound level," "day-night average sound level," "noise level reduction," "sound exposure level," and "yearly day-night average sound level" are defined in accordance with national and international acoustical definitions and are being provided in the rule to ensure proper understanding and application of those terms in Part 150 airport noise compatibility planning.

The regulatory provisions are simplified by eliminating repetitive use of the terms "Director, Office of Environment and Energy" and "Regional Director of the FAA region having jurisdiction over the area in which the airport is located"; they appear in the rules as "Director" and "Regional Director," respectively.

Section 150.9 contains the designation of standardized noise systems prescribed under § 102 of the ASNA Act. Those systems apply under Part 150 and include FAA approved equivalents. An equivalency determination may be made to reflect the existence of unusual conditions at a particular airport that would result in unacceptable distortion or frustration of the purposes of Part 150 if the designated system features were strictly applied and equivalent results can be obtained through other means. The fundamental system of noise measurement is the A-weighted sound pressure level (L_A) in units of decibels (dBA). Exposure of individuals to airport noise is evaluated in terms of "yearly day-night average sound level (L_{dn})."

Normally compatible land uses for various noise exposure levels are established under Appendix A. Determinations of what land usage applies must be based on professional planning criteria and procedures utilizing the full range of methods available to local authorities, including master planning, land use planning, zoning, and building and site designing, as appropriate. When more than one current or future use is permitted, those determinations must reflect the use most adversely affected by noise.

Subpart B—Development of Noise Exposure Maps and Proposed Noise Compatibility Programs

Subpart B of Part 150 prescribes the substantive and procedural requirements for airport operators wishing to develop original or revised noise exposure maps (and the related descriptions of projected airport operations) and proposed noise compatibility programs. It also describes the initial response of the Director, Office of Environment and Energy, in acknowledging receipt of the submission and in publishing, for comment, notice of receipt in the Federal Register.

Noise exposure maps and the related descriptions under § 103 of the ASNA Act are covered by § 150.21. It specifies that a Part 150 airport operator may, after following the prescribed public procedures and consultations with public and planning agencies, submit to the FAA its noise exposure maps and related descriptions. Upon receipt, if the submissions are found to satisfy the applicable requirements, they are acknowledged as acceptable and are reflected in a notice of receipt published in the Federal Register. Section 150.21 also indicates the circumstances under which an acceptable map must be revised because of changes in airport operations that might create any substantial, new noncompatible land uses.

Section 150.23 governs Part 150 noise compatibility programs and their revisions, pursuant to portions of § 104 of the ASNA Act. Any Part 150 airport operator, who has submitted an acceptable noise exposure map, may submit to the FAA a "noise compatibility program." While a program may be submitted at the same time as a map, it must be developed in accordance with Appendix B of Part 150 and in consultation with the appropriate officials of public and planning agencies and aircraft operators using the airport. Further, in accordance with the requirement of § 150.23(c), before submitting a program, the airport operator is required to afford interested persons an adequate opportunity to review and critique the program and to consider and respond to any views, data, and comments received. A summary of that public procedure and disposition of public input must be submitted as part of the program. An acceptable means of compliance for

public involvement in developing a program is contained in the Office of Management and Budget's OMB Circular A-95. That process may be required by the terms of Federal grant-in-aid or other assistance in developing a program.

Subpart C—Evaluation and Determination of Effects of Noise Compatibility Programs

In addition to authorizing the development and submission of noise compatibility programs, § 104(b) of the ASNA Act directs the Administrator (acting for the Secretary pursuant to delegation) to approve or disapprove each program submitted under the applicable requirements of § 104(a).

Subpart C of Part 150 describes the procedure followed and general criteria applied by the FAA to determine the pertinent effects of proposed noise compatibility programs and whether the proposed program should be approved or disapproved. It also specifies the separate process that may be followed for those portions of a program involving the use of flight procedures for noise control or abatement purposes.

Section 150.31 prescribes the procedure and initial response of the FAA when it receives (from a Part 150 airport operator) a noise compatibility program. The FAA's Director, Office of Environment and Energy, conducts a preliminary review of the submission. Based on that review and other available information, the Director acknowledges to the airport operator receipt of the program and publishes, for public comment, in the **Federal Register** a notice of receipt of the program. The acknowledgment and notice identify the airport involved, and the date of receipt of the program. They indicate that the program is available in the offices of the Director, the Regional Director (of the appropriate region), and the airport operator and that either the submission satisfies the applicable requirements and will be evaluated and a determination issued or, that it is not acceptable as presented, and is "disapproved" and returned to the airport operator for further development. The acknowledgment and notice indicate to each State whether the program includes the use of new or modified flight procedures to control aircraft for noise control (or abatement) purposes and, if so, whether a separate evaluation of those procedures might be necessary. The acknowledgment and notice will also indicate that any program could include features of a nature that, if implemented, might reduce the level of aviation safety or create an undue burden on interstate or foreign commerce (including unjust discrimination), or might not be reasonably consistent with obtaining the noise compatibility objectives; thus, further evaluation may be necessary to determine whether the program should be approved or disapproved. If no further evaluation is necessary, the acknowledgment may include the appropriate approval or disapproval.

Section 150.33 describes the process for additional evaluation of the programs. The inquiry is directed towards the factors pertinent to approvals and disapprovals. Under the ASNA Act, proposed programs must be approved (except in those aspects relating to flight procedures) if the program measures would not create an undue burden on interstate and foreign commerce and would be reasonably consistent with obtaining the goal of reducing existing, noncompatible uses and preventing the introduction of additional noncompatible uses. In addition, the program must provide for its timely revision, as required by the ASNA Act. Those aspects of a program involving the use of flight procedures are evaluated in light of the full range of the Administrator's authority and responsibilities under the Federal Aviation Act of 1958, as amended.

In conducting the evaluation, the Director may, to the extent considered necessary, confer with other officials, persons, and agencies which may have responsibilities or information pertinent to the issues. In that connection, the Director may convene an informal meeting between personnel of the FAA and other Federal agencies, the airport operator, and other persons involved in the development or implementation of the program. With regard to flight procedure measures, the Director requests the head of the responsible office or service of the FAA to explore the objectives of the program and the measures and any alternative measures for achieving them. That evaluation includes the examination of the range of available alternatives that would eliminate the reasons, if any, for disapproving the program as submitted.

An airport operator may, at any time before approval or disapproval of a program withdraw or modify the program. If the airport operator, in writing, withdraws or modifies the program (not involving flight procedures) or indicates, in writing, during the 180-day review period the intention to modify the program, the FAA terminates the evaluation and the "clock stops" with respect to the 180-day review period. A new evaluation is begun upon receipt of a modified program and a new 180-day period applies. The FAA will not evaluate more than one program for a given airport until any previously submitted program for that airport is withdrawn or modified, or a determination on it is issued.

Upon completion of the evaluation, the Director prepares, subject to approval of the Chief Counsel, a recommended determination for the Administrator's signature, approving or disapproving the program, together with the reasons for the determination, including any terms or conditions that should attend the determination.

Section 150.55 governs the issuance of determinations on noise compatibility programs. Based on the recommended determination and other available information, the Administrator issues a determination approving or disapproving the particular program. As provided by the ASNA Act, except for flight procedure portions of a program, the determination is issued within 180 days after receiving it or it may be considered approved. As provided by the ASNA Act, a determination on the use of flight procedures for noise purposes may be issued either in connection with other portions of the program or separately. Due to the variety of flight procedure matters that might be involved, and their complexity, a more specific time for determinations cannot be specified in the rule. In no case may approval of flight procedures be implied in the absence of the Administrator's express approval of them.

Section 150.55 also reflects the statutory and constitutional criteria for approving noise compatibility programs—that is, the Administrator finds that measures to be implemented would not create an undue burden on interstate or foreign commerce (including unjust discrimination) and are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses. Consistent with § 104(b) of the ASNA Act, a program may not be approved unless it provides for its revision whenever necessary when a revised noise exposure map must be submitted under § 150.21(d). The ASNA Act does not diminish or otherwise affect the Administrator's authority and responsibilities under the FA Act.

Determinations on the flight procedure aspects of a program are not governed by the provisions of the ASNA Act except in directing the Administrator to make them. Thus, the Administrator, in

accordance with the authority and responsibilities under the various statutes, must decide on a case-by-case basis whether the flight procedure measures would have any significantly adverse effect on any program, standard, or duty established pursuant to law. Accordingly, consideration will be given to the effects of the recommended flight procedure measures within the period covered by the program, including whether they would be consistent with flight safety, the efficient use and management of the navigable airspace and the Air Traffic Control system, and providing the requisite level of protection for aircraft occupants, and persons and property on the ground.

Part 150 determinations become effective upon issuance and remain in effect until the program is required to be revised or a determination is superseded by a determination on a proposed revision to the program. A determination may be sooner rescinded or modified for cause with at least 30 days written notice to the airport operators of the Administrator's intention to take that action for the reasons stated in the notice. During the 30-day period, the operator may submit for consideration any reasons or circumstances why the determination should not be rescinded or modified. Thereafter, the Administrator either rescinds or modifies the determination consistent with the notice of intent.

The FAA has reviewed applicable environmental assessment procedures, in the light of § 104(b) of the ASNA Act, to determine whether such assessment should be conducted before noise compatibility programs may be approved or disapproved under that section. It is concluded that such assessment is not required. Section 104(b) provides that a noise compatibility program becomes approved by operation of law unless disapproved within 180 days. There is no exception to this automatic approval. On the other hand, applicable procedures for reviewing the environmental impacts of Federal actions require that action be delayed until the required review is complete. It is clear that the Congress intended § 104(b) approvals to exist in all cases in which the governmental review process exceeds 180 days from the date of submission. The Act also removed discretion to disapprove a noise compatibility program if the conditions in § 104(b) are met. However, it did not affect the Administrator's responsibilities or authority under the FA Act. Thus, § 104(b) states that the Secretary "shall approve" each program that meets the applicable conditions. At best, the 180-day period would permit cursory review of the environmental impacts that a noise compatibility program could have on regional and local planning and land uses. And, once that assessment were prepared, it could not be used as a decision document once the conditions are met because approval is required by law. A primary purpose of environmental review requirements is to provide a framework for subsequent decision making. If the conditions in § 104(b) are not met, even delaying disapproval in order to assess the environmental impacts of a disapproval would result in approval by default (by operation of law).

Furthermore, environmental assessment, leading to a finding of no significant impact or to an environmental impact statement, will be conducted where required by applicable procedures prior to taking any Federal implementing action, including making any grants under § 104(c)(1) of the ASNA Act to carry out all or part of any program not disapproved under § 104(b). The making of those grants is descretionary. Approval of a noise compatibility program does not "trigger" a commitment to fund, or to take other Federal actions, to implement that program. Finally, much of the public disclosure objective of applicable environmental review procedures implementing the National Environmental Policy Act of 1969 is afforded to the public by § 104(a) of the ASNA Act. That section requires consultation with potentially affected public agencies and planning agencies before any noise compatibility program is submitted to the FAA for review.

For all of these reasons, the FAA has determined that approval of noise compatibility programs (by specific approval or by inaction) and disapproval of those programs, under § 140(b), are "categoridcal exclusions" contemplated by FAA guidelines and procedures for the review of environmental impacts. This categorical exclusion will be added to the applicable FAA Order when it is next revised.

Appendix A—Noise Exposure Map Development

Appendix A to Part 150 contains the technical description and standards constituting the methodology for developing acceptable airport noise exposure maps. That methodology utilizes the system of measuring noise at airports (L_A) designated under § 150.9(a) for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people. The system for determining the exposure of individuals resulting from the operation of an airport, designated under § 150.9(b), is also incorporated into the methodology for developing noise exposure maps. That system accounts for noise intensity, duration frequency, and time of occurrence. Appendix A also contains the list of land uses identified by the Administrator as "normally compatible" with the various exposures of individuals to noise. Those provisions reflect the requirements of § 102 of the ASNA Act.

Section A150.101 prescribes the content requirements for noise exposure maps, including depiction of at least the 65, 70, and 75 L_{dn} noise contours around the airport and identification of the land uses within those contours that are not listed among the compatible land uses (on Table 2) for those noise levels. (L_{dn} noise contours above L_{dn} 75 need not be shown on the map even though compatibility of land uses at those levels is provided under Table 2.) At airports with little or no air carrier activity, it may be desirable to also depict the 55 L_{dn} or 60 L_{dn} noise contour. Other specific information is required to identify political subdivisions having jurisdiction over land uses in the area and other pertinent details. It also prescribes the general requirements for the description of aircraft operation at the airport projected for 1985 (and, if submitted after 1982, the fifth year after submission of the map), and the ways, if any, those operations will affect the noise exposure map.

As previously noted, Appendix A, Table 2, identifies the land uses which are normally compatible with the various exposure levels of individuals to noise. Under five general categories, the classifications of land uses can be matched with the various noise levels (yearly day-night averages and levels (L_{dn}) in units of decibels) to determine whether they are normally compatible. It also indicates the amount of "noise level reduction" (outdoor levels to indoor levels) that must be achieved through noise attenuation measures in the design and construction of the structure to accommodate the specified indoor activity. Those values are indicated for those uses that are generally compatible but for which indoor levels must be reduced by the specified amount in order to be considered normally compatible for purpose of Part 150.

Where the community determines that existing residential uses must be continued or new residential uses

allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) through the use of sound attenuation materials should be incorporated into building codes. Normal construction can be expected to provide and NLR of about 20 dB, thus, the reduction requirements are often stated as 5, 10, or 15dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, it should be noted that the NLR criteria will not eliminate outdoor noise problems. It is FAA policy to discourage residential use, particularly new residential development, within the 65 L_{dn} contour. The absence of viable alternative development options should be determined, and an evaluation indicating that a demonstrated community need for residential use would not met if development were prohibited in these zones should be conducted, prior to a community's allowing new development within the 65 L_{dn}.

The use of an FAA approved computer prediction program, such as the FAA's Integrated Noise Model, is required under § A150.3. Approval of a program indicates its capability to produce the required results from the input of standardized technical information about the airport, its operations, and environs. Public availability to an approved computer program assures the opportunity for those interested to substantiate the results.

Section A150.105 requires that, with the submission of noise exposure maps, the airport operator identify and depict the geographic boundaries of each public and planning agency within the 65 L_{dn} contour and describe the land use planning and control authority either vested in each agency or available under current or prospective legal authorization.

The mathematical methodology required to compute the necessary sound levels based on airport noise measurements is prescribed under §§ A150.201 through A150.205. Those provisions provide the technical description of the formulas, symbology, and processes for computing average sound levels, day-night average sound levels, and sound exposure levels. As appropriate, those sound levels are applied in developing noise exposure maps (and related descriptions of projected 1985 and later airport operations) and airport noise compatibility programs under Part 150.

Appendix B—Airport Noise Compatibility Program Development

Appendix B to Part 150 prescribes the content and technical methodology for developing airport noise compatibility programs. Those programs set forth the specific measures the airport operator (or other person or agency responsible) has taken, or proposes to take, in light of the noise exposure map for that airport, to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible uses.

The purpose of an airport noise compatibility program, as stated under § B150.1, is to identify for implementation the measures available in achieving the optimal accommodation of both the airport and community activities around the airport consistent with safety, economic, and environmental considerations that apply.

Section B150.3 indicates the need for an accurate and complete noise exposure map as the basis for developing a responsive airport noise compatibility program. Based on that map, the airport operator may evaluate the possible noise control and abatement measures. The objectives of those measures are reflected in § B150.5. The analysis of alternative measures is conducted in accordance with § B150.7 which helps to identify those measures and the factors that should be considered in developing the program and the supporting documentation required to be submitted to the FAA under § 150.23.

Effective Date

Section 102 of the ASNA Act requires the FAA to adopt by regulation, not later than February 28, 1981, three specific things—(1) a single, highly reliable system of measuring airport noise, (2) single system for determining the noise exposure of individuals from airport operations; and (3) identification of land uses which are normally compatible with various levels of exposure of individuals to noise. Section 103 of the ASNA Act authorizes any airport operator to submit to the FAA, after the effective date of these regulations, a noise exposure map and, thereafter, a noise compatibility program for approval. Virtually every topic and issue involved in this action was covered in Notice No. 76–24 and was the subject of public hearing and comment. However, the statutory implementation dates did not provide adequate time to complete the required consultations and to also develop and propose the resulting provisions for further, meaningful public discussion after enactment of the ASNA Act. Accordingly, I find that further notice and public procedure before adopting interim rules is impracticable and unnecessary. Further, airport operators and other interested persons must be provided the noise measurement systems and the identification of "normally compatible land uses" to develop and submit noise exposure maps based on them. The FAA must also establish at least a tentative, interim administrative process for receiving those maps and for evaluating and determining whether to approve or disapprove noise compatibility programs that may be submitted soon after, or with, noise exposure maps after February 28, 1981. That process should be available to the public as far in advance of those potential submissions as possible to ensure that they are developed and prepared with the knowledge of the procedure, standards, and criteria under which they will be processed and evaluated. The FAA has concluded that a comprehensive regulatory provision, including the necessary procedural and substantive rules, is the most effective means to establish the required program, even though a major portion of the regulation concerns the FAA's internal process and management of that program. Since that program as an interim rule should be in place before the statutory implementation date, I find that notice and public procedure on that portion of the interim rule is impracticable and unnecessary. I further find that, for the reasons stated, good cause exists for making this amendment effective in less than 30 days after its publication in the **Federal Register**.

As previously discussed, this amendment is an interim rule and, based on early, first-year experience with it and on commenters views and suggestions on the interim rule, the FAA will consider any necessary changes to it before adopting the final rule.

Denial of Petition for Rulemaking and Adoption of Amendment

Accordingly, the Federal Aviation Administration hereby takes the following actions:

(1) Pursuant to the provisions of § 11.51 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11), I find that, in light of this amendment, further rulemaking proceedings on the petition for rulemaking of the Air Transport Association of America, dated January 16, 1979 (Petition Notice No. FR–79–9: 44 FR 52076; September 6, 1979), is not necessary or justified. Thus, to the extent the rule requested by petitioner is inconsistent with the amendment issued as part of this action, the petition of the

Air Transport Association of America is hereby denied.

(2) In response to the U.S. Environmental Protection Agency recommendation for rulemaking contained in Notice No. 76-24 (41 FR 51522; November 22, 1976) and, in accordance with Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193; 94 Stat. 50; February 18, 1980) pursuant to 49 CFR 1.47(M), Subchapter I of the Federal Aviation Regulations (14 CFR Chapter I, Subchapter I) is amended, effective February 28, 1981, by adding a new Part 150 to read as follows:

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

Subpart A—General Provisions

Subpart B—Submission of Noise Exposure Maps and Noise Compatibility Programs

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

Authority: Secs. 301(a), 307, 313(a), 601, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. 1341(a), 1348, 1354(a), 1421 and 1431); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); secs. 101, 102, 103(a), and 104(a) and (b), Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 2101, 2102, 2103(a), 2104(a) and (b)); and 49 CFR 1.47(m).

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

Subpart A—General Provisions

§ 150.1 Scope and purpose.

This part prescribes the procedures, standards, and methodology governing the development, submission, and review of airport noise exposure maps and airport noise compatibility programs, including the process for evaluating and approving or disapproving those programs. It prescribes single systems for—(a) measuring noise at airports and surrounding areas that generally provides a highly reliable relationship between projected noise exposure and surveyed reaction of people to noise; and (b) determining exposure of individuals to noise that results from the operations of an airport. This part also identifies those land uses which are normally compatible with various levels of exposure to noise by individuals. It provides technical assistance to airport operators, in conjunction with other local, State, and Federal authorities, to prepare and excecute appropriate noise compatibility planning and implementation programs.

§ 150.3 Applicability.

This part applies to the airport noise compatibility planning activities of the operators of specified airports not used exclusively by helicopters, including air carrier airports certificated under § 612 of the Federal Aviation Act of 1958, as amended; airports whose development projects are eligible for terminal development costs under § 20(b) of the Airport and Airway Development Act of 1970; and public use airports, as prescribed under § 150.7 of this part.

§ 150.5 Limitations of this part.

(a) Pursuant to 49 U.S.C. 2101 et seq., this part provides for airport noise compatibility planning and land use programs necessary to the purposes of those provisions. No determination is made, under this part, that it or any approval or disapproval, in whole or part, of any map or program submitted under this part is, or should constitute, the use of the land which is acceptable or unacceptable for that land under Federal, State, or local law.

(b) Approval of a noise compatibility program under this part neither represents a commitment by the FAA to support or financially assist in the implementation of the program, nor does it determine that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

(c) Approval of a noise compatibility program under this part does not direct any implementing action. Requests for subsequent Federal actions to implement specific noise compatibility measures may be required, and, if appropriate, FAA review of the request will include an environmental assessment of the proposed action, pursuant to the National Environmental Policy Act (42 U.S.C. 432 *et seq.*) and applicable regulations, directives, and guidelines.

§ 150.7 Definitions.

As used in this part, unless the context requires otherwise, the following terms have the following meanings:

"Airport" means any airport, as defined under Part 1 of this chapter, not used exclusively by helicopters, which—(1) is operated under a valid operating certificate issued under § 612 of the Federal Aviation Act of 1958, as amended; (2) is eligible for grant-in-aid funding of terminal development costs under § 20(b) of the Airports and Airway Development Acts; or (3) is open to the general public without prior authorization of the airport operator being necessary to use the airport.

"Airport noise compatibility program" and "program" mean that program reflected in documents (and revised documents) developed in accordance with Appendix B of this part, including the measures proposed or taken by the airport operator to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible land uses within the area.

"Airport operator" means any person holding a valid operating certificate issued under this chapter for an airport under this part, or, if none, the person having the operational control and responsibility of an airport covered by this part.

"Average sound level" means the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.

"Compatible land use" means the use of land that is identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under Appendix A (Table 2) of this part.

"Day-night average sound level" means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 A.M. and between 10 P.M. and midnight, local time."

"Director" means the FAA, Director, Office of Environment and Energy.

"Flight procedures" means any requirements, limitations, or other actions affecting the operation of aircraft in the air or on the ground.

"Noise exposure map" means a scaled, geographic, and topographic depiction of an airport, its noise contours, and surrounding area developed in accordance with § A150.101 of Appendix A of this part, including the required descriptions of projected aircraft operations at that

airport during 1985 and, if submitted after 1982, during the fifth calendar year beginning after submission of the map, together with the ways, if any, those operations for each of those years will affect the map (including noise contours and the projected land uses).

"Noise level reduction" (NLR) means the amount of noise level reduction (L_A) achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.

"Noncompatible land use" means the use of land that is not identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise reduction level for the indoor activities involved at the location) because the yearly day-night average sound level is above that identified for that or similar use under Appendix A (Table 1) of this part.

"Regional Director" means the Director of the FAA Region having jurisdiction over the area in which an airport covered by this part is located.

"Sound exposure level" means the level, in decibels, of the time integral of squared A-weighted sound pressure during a specified period or event, with reference to the square of the standard reference sound pressure of 20 micropascals and a duration of one second.

"Yearly day-night average sound level" (L_{dn}) means the 365-day average, in decibels, day-night average sound level.

§ 150.9 Designation of noise systems.

For purposes of this part, the following designations apply:

(a) The noise at an airport and surrounding areas covered by a noise exposure map must be measured in A-weighted sound pressure level (L_A) in units of decibels (dBA) in accordance with the specifications and methods prescribed under Appendix A of this part, or an FAA approved equivalent.

(b) The exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day-night averge sound level (L_{dn}) calculated in accordance with the specifications and methods prescribed under Appendix A of this part, or an FAA approved equivalent.

(c) Uses of land which are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under Appendix A of this part, or an FAA approved equivalent. Determination of land use must be based on professional planning criteria and procedures utilizing comprehensive, or master, land use planning, zoning, and building and site designing, as appropriate. If more than one current or future land use is permissible, determination of compatibility must be based on that use most adversely affected by noise.

§ 150.11 Incorporations by reference.

(a) *General.* This part prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated and are approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. § 552(a) and 1 CFR Part 51.

(b) *Changes to incorporated matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that affects compliance with standards and procedures is made under 14 CFR Part 11 and 1 CFR Part 51.

(c) *Identification statement.* The complete title or description which identifies each published matter incorporated by reference in this part is as follows:

International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters," dated 1973.

(d) *Availability for purchase.* Published material incorporated by reference in this part may be purchased at the price established by the publisher or distributor at the following mailing addresses:

IEC Publications

(1) The Bureau Central de la Commission Electrotechnique, Internationale, 1, rue de Varembe, Geneva, Switzerland.

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018.

(e) *Availability for inspection.* A copy of each publication incorporated by reference in this part is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591.

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591.

(3) The respective Regional Offices of the Federal Aviation Administration as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts.

(ii) Eastern Regional Office, Federal Building, John F. Kennedy (JFK) International Airport, Jamaica, New York.

(iii) Southern Regional Office, 3400 Normanberry Street, East Point, Georgia.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois.

(v) Central Regional Office, 601 East Twelfth Street, Kansas City, Missouri.

(vi) Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas.

(vii) Rocky Mountain Regional Office, 10455 East 25th Avenue, Aurora, Colorado.

(viii) Northwest Regional Office, FAA Building, 9010 East Marginal Way South, King County International Airport (Boeing Field), Seattle, Washington.

(ix) Western Regional Office, 1500 Aviation Boulevard, Hawthorne, California.

(x) Alaskan Regional Office, 701 "C" Street, Anchorage, Alaska.

(xi) Pacific-Asia Regional Office, Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii.

(xii) European Office, Tour Madou Building, 1 Place Madou, 1020 Brussels, Belgium.

(4) The Office of the Federal Register, Room 8401, 1100 "L" Street, NW., Washington, DC.

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

§ 150.21 Noise exposure maps and related descriptions.

(a) Each airport operator may, after completion of the consultations and public procedure specified under paragraph (b) of this section, submit simultaneously to the Director and the Regional Director, a noise exposure map (or revised map) which identifies each noncompatible land use in each area depicted on the map, as of the date of submission, together with a description of—

(1) The projected aircraft operations at the airport for 1985 and, if submitted after 1982, the fifth calendar year beginning after the date of submission (based on reasonable assumptions concerning future aircraft operations at the airport, any planned airport development, planned land use changes, and population and demographic changes in the surrounding areas); and

(2) The nature and extent, if any, of those operations which will affect the land uses depicted on the map.

(b) Each map, revised map, and related descriptions submitted under

this section must be developed and prepared in accordance with Appendix A of this part, or an FAA approved equivalent, and in consultation with public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction is within the 65 L_{dn} contour depicted on the map, FAA regional officials, and other Federal officials having local responsibility for the area depicted. For air carrier airports, consultation must include any air carriers and, to the extent practicable, other aircraft operators using the airport. For nonair carrier airports, consultation must include, to the extent practicable, aircraft operators using the airport. Prior to submission of the map, the airport operator shall afford interested persons adequate opportunity to submit their views, data, and comments concerning the correctness and adequacy of the draft noise exposure map and descriptions of projected aircraft operations.

(c) The Director acknowledges receipt of noise exposure maps and descriptions and indicates whether they are accepted because they comply with the requirements applicable to them. The Director publishes in the Federal Register a notice of receipt of each noise exposure map and description, identifying the airport involved and whether it has been accepted as complying with applicable requirements.

(d) If, after submission of a noise exposure map under paragraph (a) of this section, any actual or proposed change in the operation of the airport might create any substantial, new noncompatible use in any area depicted on the map, the airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map showing the new noncompatible use.

(e) Each map and revised map must be accompanied by a description of the consultation required under paragraph (b) of this section and the opportunities afforded the public to review and comment during the development of the map.

(f) Each map, or revised map, and description of consultation submitted to the FAA must be certified as true and complete under penalty of 18 U.S.C. 1001.

§ 150.23 Noise compatibility programs.

(a) Any airport operator who has submitted an acceptable noise exposure map under § 150.21 may, after FAA notice of acceptability and other consultation and public procedure specified under paragraphs (b) and (c) of this section, as applicable, submit simultaneously to the Director and the Regional Director a noise compatibility program (or revised program).

(b) Each noise compatibility program (and revised program) must be developed and prepared in accordance with Appendix B of this part, or an FAA approved equivalent, and in consultation with the officials of any public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction within the 65 L_{dn} noise contours is depicted on the noise exposure map, FAA regional and other Federal officials having local responsibility for the area depicted. For air carrier airports, consultation must include any air carriers and, to the extent practicable, other aircraft operators using the airport. For nonair carrier airports, consultation must include, to the extent practicable, aircraft operators using the airport.

(c) Prior to submission of a program, the airport operator shall afford interested persons an adequate opportunity to submit their views, data, and comments with regard to the merits of the draft noise compatibility program for that airport.

(d) Each noise compatibility program submitted to the FAA must consist of at least the following:

(1) A copy of the current, noise exposure map (and the related descriptions of projected, future operations of aircraft at the airport) and accompanying documents (or a summary of them) submitted to, and accepted by, the FAA under § 150.21 of this part. Any summary of accompanying documents must adquately describe the impact of current operations on areas surrounding the airport and list the public agencies and planning agencies identified under § A150.105 of Appendix A of this part.

(2) A description and analysis of the alternative measures considered by the airport operator in developing the program, together with a discussion of why each measure not included in the program was not included.

(3) Program measures proposed to reduce or eliminate present and future noncompatible land uses and the relative contribution of each of the proposed measures to the overall effectiveness of the program.

(4) A description of the consultation with officials of public agencies and planning agencies in areas surrounding the airport, FAA regional and other Federal officials having local responsibility for the area depicted on the noise exposure map, and any air carriers and other users of the airport.

(5) The actual or anticipated effect of the program on reducing noise exposure to individuals and noncompatible land uses in the surrounding community during 1985 and, if the noise exposure map is submitted after 1982, the fifth calendar year beginning after the date of submission of the noise exposure map. The effects must be based on expressed assumptions concerning the future aircraft operations at the airport, planned airport development, planned land use changes, and projected populations and demographic changes in the community.

(6) A description of how proposed future actions relate to any existing FAA approved airport layout plan, master plan, and system plan.

(7) A summary of the comments and material submitted to the operator under paragraphs (b) and (c) of this section, together with the operator's response and disposition of those comments and materials to demonstrate the program is feasible and reasonably consistent with obtaining the objects of airport noise compatibility planning under this part.

(8) The period covered by the program, the schedule for implementation of the program, the persons responsible for implementation of each measure in the program, and, for each measure, documentation supporting the feasibility of implementation, including any essential governmental actions and anticipated sources of funding, that will demonstrate that the program is reasonably consistent with achieving the goals of airport noise compatibility planning under this part.

(9) The schedule for periodic review and updating the airport noise compatibility.

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

§ 150.31 Preliminary review: acknowledgements.

(a) Upon receipt of a noise compatibility program (or revised program) submitted under § 150.23, the Director conducts a preliminary review of the submission.

(b) Based on that review and other available information, the Director acknowledges to the airport operator receipt of the program and publishes in the Federal Register a notice of receipt of the program each of which indicates—

(1) The airport covered by the program, and the date of receipt.

(2) The availability of the program for examination in the offices of the Director, the Regional Director, and the airport operator.

(3) That comments on the program are invited and, to the extent practicable, will be considered by the Director.

(4) A preliminary determination on whether the submission conforms to the requirements for a noise compatibility program under this part.

(5) Whether the program includes the use of new or modified flight procedures to control the operation of aircraft for purposes of noise control and abatement and, if so, whether an evaluation under § 150.33 will be necessary.

(6) That any program submitted might include measures for which need further evaluation, because if implemented they—

(i) Might reduce the level of aviation safety provided;

(ii) Might create an undue burden on interstate or foreign commerce (including unjust discrimination); or

(iii) Might not be reasonably consistent with obtaining the goal of reducing existing noncompatible uses of land and preventing the introduction of additional, noncompatible uses;

and, therefore, additional evaluation under § 150.33 is necessary to determine whether it should be approved or disapproved under this part.

(c) If, based on the preliminary review—

(1) The Director finds that the submission does not conform to the requirements of this part, the acknowledgment and notice of receipt state that finding and the acknowledgment indicates the reasons for the finding, and the Director disapproves and returns the unacceptable program to the airport operator for reconsideration and development of a program in accordance with this part;

(2) The Director finds that the submission conforms to the requirements of this part for noise compatibility programs and that no further evaluation of the program is necessary, the acknowledgment may include a determination on the program under § 150.35 of this subpart; or

(3) The Director finds that further evaluation of the program is necessary, the acknowledgment and notice of receipt indicate that the additional evaluation will be conducted under § 150.33, and, based on that evaluation and other available information, a determination will be issued under § 150.35 of this part.

§ 150.33 Evaluation of programs.

(a) To the extent necessary, the Director conducts an evaluation of the anticipated effects of each noise compatibility program (and revised program) and, based on that evaluation, recommends that the Administrator either approves or disapproves the program. The evaluation includes consideration of proposed measures that—

(1) Adversely impact on interstate and foreign commerce (including undue discrimination); and

(2) Are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

That evaluation, or a separate evaluation, considers the use of any flight procedures contained in the program for purposes of reducing exposure of persons to noise in the area surrounding the airport. It may also include an evaluation of those proposed measures that might adversely affect the execution of the authority and responsibilities of the Administrator under the Federal Aviation Act of 1958, as amended.

(b) To the extent considered necessary, the Director may—

(1) Confer with the airport operator, the Regional Director and other officials of governmental agencies having jurisdiction over the areas affected by the program; and other persons known to have information and views material to the evaluation;

(2) Explore the objectives of the program and the measures, and any alternative measures, for achieving the objectives.

(3) Consult and coordinate various aspects of the program with other elements of the FAA having responsibility for any FAA programs and policy affected by the program.

(4) Examine the program for developing a range of alternatives that would eliminate the reasons, if any, for disapproving the program.

(5) Convene an informal meeting with the airport operator and other persons involved in developing or implementing the program for the purposes of gathering all facts relevant to the determination of approval or disapproval of the program and of discussing any needs to accommodate or modify the program as submitted.

(c) An airport operator may, at any time before approval or disapproval of a program, withdraw or revise the program. If the airport operator withdraws or revises that part of the program not involving flight procedures, or indicates to the Director, in writing, the intention to revise the program, the Director terminates the evaluation and notifies any known interested persons of that action. That termination stops the 180-day review period. The Director does not evaluate more than one program for any airport until any previously submitted program has been withdrawn, revised, or a determination on it is issued. A new evaluation is commenced upon receipt of a revised program, and a new 180-day approval period is begun, unless the Director finds that the modifications made, in light of the overall revised program, can be evaluated separately and integrated into the unmodified portions of the revised program without exceeding the original 180-day approval period or undue expense to the government.

(d) The Director prepares and forwards, through the Chief Counsel, to the Administrator a recommendation for approving or disapproving the program together with the reasons for the recommendation and any terms or conditions that should attend the determination.

§ 150.35 Determinations on programs; publication; effectivity.

(a) The Administrator, based on the recommendations of the Director and other available information, issues a determination approving or disapproving each airport noise compatibility program (and revised program). A determination on a program acceptable under this part is issued within 180 days after the program is received under § 150.23 of this part or it may be considered approved, except for (1) any portion of a program relating to the use of flight procedures for noise control purposes; or (2) programs for airports not operated under a valid certificate issued under § 612 of the Federal Aviation Act of 1958, as amended, and whose projects for airport development are eligible for terminal development costs under § 20(b) of the Airport and Airway Development Act. A determination on a program for an airport covered by the exceptions to the 180-day review period for approval will be issued within a reasonable time after receipt of the program. Determinations relating to the use of any flight procedure for noise control purposes may be issued either in connection with the determination on other portions of the program or separately. Except as provided by this paragraph, no approval of any noise compatibility program, or any portion of a program, may be implied in the absence of the Administrator's express approval.

(b) The Administrator approves programs under this part, except for any aspects of programs that relate to the use of flight procedures for noise control purposes, if—

(1) It is found that the program measures to be implemented would not create an undue burden on interstate or foreign commerce (including any unjust discrimination) and are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses; and

(2) The program provides for revision of the program, including whenever revision of the noise exposure map is specified under § 150.21(b) of this part.

(c) The Administrator may approve those aspects of programs relating to the use of flight procedures for noise control purposes if, in addition to the requirements specified under paragraph (b) of this section, the proposed measures can be implemented within the period covered by the program and without—

(1) Reducing the level of aviation safety provided;

(2) Derogating the requisite level of protection for aircraft, their occupants and persons and property on the ground;

(3) Adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems; or

(4) Adversely affecting any other of the Administrator's powers and responsibilities prescribed by law or any other program, standard, or requirement established by the Administrator in accordance with law.

(d) When a determination is issued, the Director notifies the airport operator and publishes a notice of approval or disapproval in the Federal Register identifying the nature and extent of the determination.

(e) Determinations issued under this part become effective upon issuance and remain effective until the later of the following—

(1) The program is required to be revised under this part, or under its own terms and is not so revised; or

(2) If a revision has been submitted for approval, a determination is issued on the revised program.

A determination may be sooner rescinded or modified for cause with at least 30 days written notice to the airport operator of the Administrator's intention to rescind or modify the determination for the reasons stated in the notice. The airport operator may, during the 30-day period, submit to the Administrator for consideration any reasons and circumstances why the determination should not be rescinded or modified on the bases stated in the notice of intent. Thereafter, the Administrator either rescinds or modifies the determination consistent with the notice or withdraws the notice of intent and terminates the action.

(f) Determinations may contain conditions that must be satisfied before portions of the program which are implemented may affect aircraft or aircraft operations or that require that those implementations comply with prescribed criteria.

Appendix A—Noise Exposure Maps

Part A—General

Sec.

Part B—Noise Exposure Map Development

Part C—Mathematical Descriptions

Part A—General

§ A150.1 Purpose.

(a) This Appendix establishes a uniform methodology for the development and preparation of airport noise exposure maps. That methodology includes a single system of measuring noise at airports for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise along with a separate single system for determining the exposure of individuals to noise. It also identifies land uses which are normally compatible with various exposures of individuals to noise around airports.

(b) This appendix provides for the use of a computer-based mathematical program, such as the FAA's Integrated Noise Model (INM), for developing standardized noise exposure maps and predicting noise impacts. Noise monitoring may be utilized by airport operators for data acquisition and data refinement, but is not required by this part for the development of noise exposure maps or airport noise compatibility programs. Whenever noise monitoring is used, it should be accomplished in accordance with § 150.105 of this appendix.

§ A150.3 Noise descriptors.

(a) *Airport Noise Measurement.* The A-Weighted Sound Level, measured, filtered and recorded in accordance with § A150.5 of this appendix, must be employed as the unit for the measurement of single event noise at airports and in the areas surrounding the airports.

(b) *Airport Noise Exposure.* The yearly day-night average level (L_{dn}) must be employed for the analysis and characterization of multiple aircraft noise events and for determining the cumulative exposure of individuals to noise from airports.

§ A150.5 Noise measurement procedures and equipment.

(a) The A-weighted sound levels must be measured or analyzed with a device which shows "slow response" characteristics as defined in International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters" as incorporated by reference in Part 150 under § 150.11. Further, the A-weighting filter characteristics for the sound level measuring device should meet the specifications and tolerances specified. However, for purposes of this part, the tolerances allowed for general purpose, type 2 sound level meters in Table 1, are acceptable.

(b) The A-weighting values, in a digital processing data reduction system or assigned arithmetically to measured, one-third octave sound pressure level values, must be the "curve A" values specified in the table entitled "Relative Responses and Associated Tolerances for Free Field Conditions" in the appendix to IEC Publication No. 179. (Tolerance limits associated with the table do not apply.)

(c) Noise measurements and reporting of them must be made in accordance with accepted acoustical measurement methodology, such as those described in American National Standards Institute publication ANSI 51.13, dated 1971 as revised 1979, entitled "ANS—Methods for the Measurement of Sound Pressure Levels"; ARP No. 796, dated 1969, entitled Measurement of Aircraft Exterior Noise in the Field"; "Handbook of Noise Measurement," Ninth Ed. 1980, by Arnold P. G. Peterson; or "Acoustic Noise Measurement," dated Jan., 1979, by J. R. Hassell and K. Zaveri. For purposes of this part, measurements intended for comparison to a State or local standard or with another transportation noise source (including other aircraft) must be reported in maximum A-weighted sound levels; for computation or validation of the yearly day-night average level (L_{dn}), measurements must be reported in sound exposure level (L_{AE}), as defined in § A150.205 of this appendix.

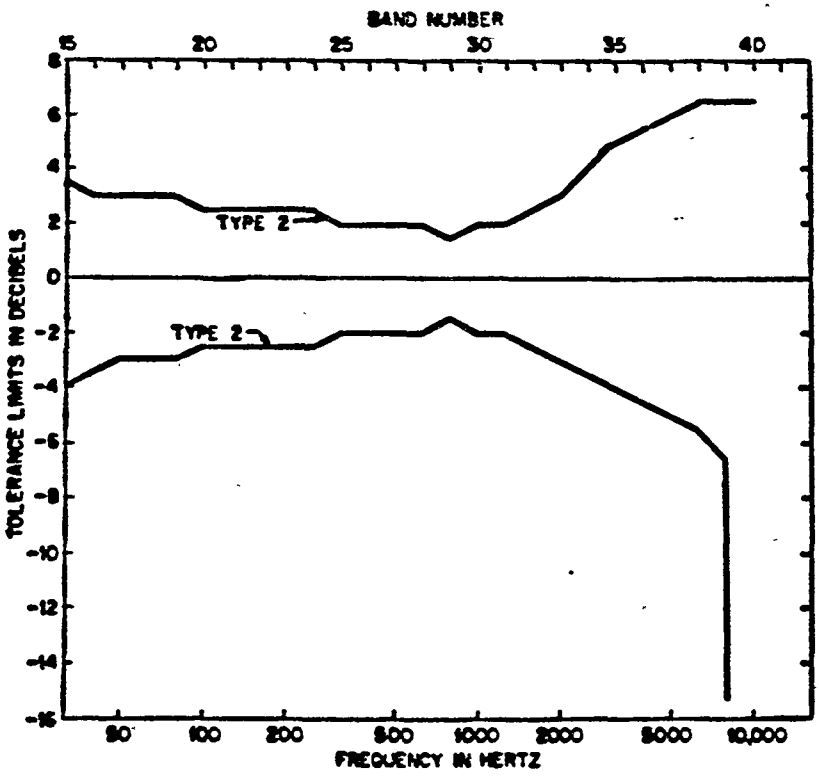

TABLE 1 - Tolerances Allowed On The A-Weighting Characteristics For Type 2 Meters

Part B—Noise Exposure Maps

§ *A150.101 Noise contours and land uses.*

(a) To determine the extent of the noise impact of an airport, airport proprietors developing noise exposure maps in accordance with this part shall develop L_{dn} contours around the airport. Continuous contours must be developed for L_{dn} levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where L_{dn} values exceed 65 L_{dn}, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 2 of this appendix describes compatible and use information for several land uses as a function of L_{dn} levels. The ranges of L_{dn} level in Table 2 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured L_{dn} level at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

(c) Compatibility designations in Table 2 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) All land uses are normally compatible with noise levels less than 65 L_{dn}. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) The noise exposure maps must also contain and identify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of 65, 70, and 75 L_{dn} resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the 65 L_{dn} contours. (No land use shall be identified as noncompatible where the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport services is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities).

(7) Locations of any aircraft noise monitoring sites utilized for data aquisition and refinement procedures.

(8) Total areas (in square miles) within the 65, 70, and 75 L_{dn} contours, in accordance with § A150.5 of this appendix.

(9) Estimates of the number of people residing within the 65, 70, and 75 L_{dn} contours.

Table 2.—*Land Use Compatibility* With Yearly Day-Night Average Sound Levels*

Land use	Yearly day-night average sound level (L_{dn}) in decibels					
	Below 65	65–70	70–75	75–80	80–85	Over 85
Residential:						
Residential, other than mobile homes and transient lodgings.	Y	[1]N	[1]N	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	[1]N	[1]N	[1]N	N	N
Public use:						
Schools, hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	[2]Y	[3]Y	[4]Y	[4]Y
Parking	Y	Y	[2]Y	[3]Y	[4]Y	N
Commercial use:						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment.	Y	Y	[2]Y	[3]Y	[4]Y	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	[2]Y	[3]Y	[4]Y	N
Communication	Y	Y	25	30	N	N
Manufacturing and production:						
Manufacturing, general	Y	Y	[2]Y	[3]Y	[4]Y	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	[6]Y	[7]Y	[8]Y	[8]Y	[8]Y
Livestock farming and breeding	Y	[6]Y	[7]Y	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational:						
Outdoor sports arenas and spectator sports	Y	[5]Y	[5]Y	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses remains with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

Key

SLUCM—Standard Land Use Coding Manual.

Y (Yes)—Land Use and related structures compatible without restrictions.

N (No)—Land Use and related structures are not compatible and should be prohibited.

NLR—Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30, or 35—Land use and related structure generally compatible; measures to achieve NLR or 25, 30, or 35 must be incorporated into design and construction of structure.

[1] Where the community determines that residential uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

[2] Measures to achieve NLR of 25 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

[3] Measures to achieve NLR of 30 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

[4] Measures to achieve NLR of 35 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

[5] Land use compatible provided special sound reinforcement systems are installed.

[6] Residential buildings require an NLR of 25.

[7] Residential buildings require an NLR of 30.

[8] Residential buildings not permitted.

§ A150.103 Use of computer prediction program.

(a) The airport operator shall acquire the aviation operations data necessary to develop noise exposure contours using an FAA approved computer program, such as the Integrated Noise Model (INM). In considering approval of a computer program key factors include the capability of the program to produce the required output and the public availability of the program or methodology to provide interested parties the opportunity to substantiate the results.

(b) The following information must be obtained for input to the computer program:

(1) A map of the airport and its environs at an adequately detailed scale (not less than 1 inch to 8,000 feet) indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 30,000 feet from the end of each runway.

(2) Airport activity levels and operational data which will indicate, on an annual average-daily-basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the standard daytime (0700–2200 hours local) and nighttime (2200–0700 hours local) periods for both landings and takeoffs.

(3) For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles along with the engine power levels needed to fly that approach profile.

(4) For takeoffs—the flight profile which is the relationship of altitude to distance from start-or-roll along with the engine power levels needed to fly that takeoff profile; these data must reflect the use of noise abatement departure procedures and, if applicable, the takeoff weight of the aircraft or some proxy for weight such as stage length.

(5) Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

(6) The government furnished data depicting aircraft noise characteristics (if not already a part of the computer program's stored data bank).

(7) Airport elevation and average temperature.

§ A150.105 Identification of public agencies and planning agencies.

(a) The airport proprietor shall identify and depict on each noise exposure map (and revised map) the geographic areas of jurisdiction of each public agency and planning agency which is either wholly or partially contained within the 65 L_{dn} boundary and shall describe—

(1) The land use planning and control authority available to each agency; and

(2) The results of the consultations conducted with those agencies.

(b) To be accepted, an analysis of the types of land use control available to the impacted jurisdictions must include, but not be limited to, the following general categories of land use control:

(1) Acquisition and disposition of land.

(2) Regulatory (police) power.

(3) Capital improvement programs.

(4) Monetary and fiscal policy.

(5) Contractual agreements.

(c) For prospective applications of local land use control authority, the airport proprietor shall indicate whether the specified authority is (1) as a matter of administrative discretion, (2) pursuant to the enactment of a local law, or (3) as requiring State or local enabling legislation.

Subpart C—Mathematical Descriptions

§ A150.201 General

The following mathematical descriptions provide the most precise definition of the yearly day-night average sound level (L_{dn}), the data necessary for its calculation, and the methods for computing it.

§ A150.203 Symbols.

The following symbols are used in the computation of L_{dn}:

Measure (in dB)	Symbol
Average Sound Level, During Time T	L_T
Day-Night Average Sound Level (individual day)	L_{dn}
Yearly Day-Night Average Sound Level	L_{dn}
Sound Exposure Level	L_{AE}

§ A150.205 Mathematical computations.

(a) Average sound level must be computed in accordance with the following formula:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\int_0^T 10^{L_A(t)/10}\,dt\right] \quad (1)$$

where T is the length of the time period, in seconds, during which the average is taken; $L_A(t)$ is the instantaneous time varying A-weighted sound level during the time period T.

(1) Note: When a noise environment is caused by a number of identifiable noise events, such as aircraft flyovers, average sound level may be conveniently calculated from the sound exposure levels of the individual events occurring within a time period T:

$$L_T = 10 \log_{10} \left[\frac{1}{T} \sum_{i=1}^{n} 10^{L_{AEi}/10} \right] \quad (2)$$

where L_{AEi} is the sound exposure level of the i-th event, in a series of n events in time period T, in seconds.

(2) Note: When T is one hour, L_T is referred to as a one-hour average sound level.

(b) Day-night average sound level (individual day) must be computed in accordance with the following formula:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{86400} \left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10} dt + \int_{0700}^{2100} 10^{L_A(t)/10} dt + \int_{2100}^{2400} 10^{[L_A(t)+10]/10} dt \right) \right] \quad (3)$$

Time is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. It is often convenient to compute day-night average sound level from the one-hour average sound levels obtained during successive hours.

(c) Yearly day-night average sound level must be computed in accordance with the following formula:

$$L_{dn} = 10 \log_{10} \frac{1}{365} \sum_{i=1}^{365} 10^{L_{dni}/10} \quad (4)$$

where L_{dni} is the day-night average sound level for the i-th day out of one year.

(d) Sound exposure level must be computed in accordance with the following formula:

$$L_{AE} = 10 \log_{10} \left(\frac{1}{t_o} \int_{t_1}^{t_2} 10^{L_A(t)/10} dt \right) \quad (5)$$

where t_o is one second and $L_A(t)$ is the time-varying A-weighted sound level in the time interval t_1 to t_2.

The time interval should be sufficiently large that it encompasses all the significant sound of a designated event.

The requisite integral may be approximated with sufficient accuracy by integrating $L_A(t)$ over the time interval during which $L_A(t)$ lies within 10 decibels of its maximum value, before and after the maximum occurs.

Appendix B—Noise Compatibility Programs

Sec.
B150.1 Scope and purpose.
B150.3 Requirement for noise map.
B150.5 Program standards.
B150.7 Analysis of program alternatives.

§ *B150.1 Scope and purpose.*

(a) This appendix prescribes the content and the methods for developing noise compatibility programs authorized under this part. Each program must set forth the measures which the airport operator (or other person or agency responsible) has taken, or proposes to take, for the reduction of existing noncompatible land uses and the prevention of the introduction of additional noncompatible land uses within the area covered by the noise exposure map submitted by the operator.

(b) The purpose of a noise compatibility program is to seek optimal accommodation of both airport operations and community

activities within acceptable safety, economic, and environmental parameters. That may be accomplished by reducing existing noncompatible land uses in the vicinity of the airport and preventing the introduction of new noncompatible land uses in the future. To that end, the airport operator and other responsible officials must examine a wide range of feasible alternatives of land use patterns and noise control actions.

§ *B150.3 Requirement for noise map.*

To identify noncompatible land uses within the L_{dn} 65, 70, and 75 contours, it is necessary that a current and complete noise exposure map be developed and submitted in accordance with § 150.21 of this part.

§ *B150.5 Program standards.*

Based upon the airport noise exposures and noncompatible land uses identified in the map, the airport operator shall evaluate the several alternative noise control actions and develop a noise compatibility program which—

(a) Reduces existing noncompatible uses and prevents additional noncompatible uses;

(b) Does not impose undue burden on interstate and foreign commerce;

(c) Provides for revision in accordance with § 150.21 of this part;

(d) Are not unjustly or unreasonably discriminatory.

§ *B150.7 Analysis of program alternatives.*

(a) Noise control alternatives must be considered and presented according to the following categories:

(1) Noise abatement alternatives for which the airport operator has adequate implementation authority.

(2) Noise abatement alternatives for which the requisite implementation authority is vested in a local agency or political subdivision governing body, or a state agency or political subdivision governing body.

(3) Noise abatement options for which requisite authority is vested in a Federal agency.

(b) Minimizing the noise impact can be achieved through actions that are discretionary to the Federal Aviation Administration or the airport operator or pursuant to FAA approval or discretionary to state or local governing bodies. At a minimum, the operator shall consider the following alternatives, subject to the constraints that the strategies are appropriate to the specific airport (for example, an evaluation of night curfews is not appropriate if there are no night flights and none are forecast) and that they are not discriminatory in nature and application:

(1) The implementation of a preferential runway system.

(2) The implementation of any restriction on the use of the airport by any type or class of aircraft based on the noise characteristics of those aircraft. Such restrictions may include, but are not limited to—

(i) Complete or partial curfews:

(ii) Denial of use of the airport to aircraft types or classes which do not meet Federal noise standards;

(iii) Capacity limitations based on the relative noiseness of different types of aircraft;

(iv) Requirement that aircraft using the airport must use noise abatement takeoff or approach procedures previously approved as safe by the FAA; and

(v) Landing fees based on FAA certificated or estimated noise emission levels or on time of arrival.

(3) The construction of barriers and acoustical shielding, including the soundproofing of public buildings.

(4) The use of flight procedures (including the modification of flight tracks) to control the operation of aircraft to reduce exposure of individuals (or specific noise sensitive areas) to noise in the area around the airport.

(5) Acquisition of land and interests therein, including, but not limited to air rights, easements, and development rights, to ensure the use of property for purposes which are compatible with airport operations.

(6) Other actions which would have a beneficial noise control or abatement impact on public health and welfare.

(7) Other actions recommended for analysis by the FAA for the specific airport.

(Secs. 301(a), 307, 313(a), 601, and 611 (b) and (c), Federal Aviation Act of 1958, as amended (49 U.S.C. 1341(a), 1348, 1354(a), 1421, and 1431 (b) and (c)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); secs. 101, 102, 103(a), and 104 (a) and (b), Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b); and 49 CFR 1.47(m))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on January 19, 1981.

Langhorne Bond,

Administrator.

[FR Doc. 81-2822 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 20026; Notice No. 81-3]

Proposed Exception in Definition of "Acoustical Change" To Permit Temporary, Limited Engine/Nacelle Intermix for Turbojet Engine Powered, Transport Category, Large Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the spirit of the President's direction in Executive Order 12044 for improving government regulations by eliminating unnecessary paperwork and requirements that do not fulfill their intended purposes, the FAA is publishing this proposed rule change for public comment. This notice proposes to amend the definition of "acoustical change" in the aircraft noise certification rules as applied to turbojet engine powered transport category, large airplanes. The amendment would permit the temporary installation and use (intermix) of different engines or nacelles on a particular airplane without documenting that the airplane continues to meet Part 36 noise standards provided that that airplane is brought back into conformance with an acoustically certificated configuration that has been shown to meet the otherwise applicable noise requirements for that airplane within 90 days of the initial change. Under the current rule, any voluntary change in type design of an airplane that might increase noise is an "acoustical change" and after the design change the airplane may not exceed specified noise levels. Thus, it is frequently necessary for aircraft manufacturers or operators to show that each possible engine/nacelle configuration combination complies with applicable noise levels. They must also provide complementary airplane flight manual materials approved by the FAA or each affected airplane. Those processes impose a considerable manpower and paperwork obligation on the part of the manufacturer, the operator, and the FAA. The FAA's review has shown that the potential increase in aircraft noise from this proposal would be minimal and the requirement is unduly restrictive to achieve its intended purposes even after full noise level compliance is required. Thus, a limited change in the rule should be made. This proposal deals with the type design changes involving "acoustical changes." It necessarily also affects the operating noise level requirements applicable to aircraft under Part 91, Subpart E, which rely upon Part 36 certificated noise levels. The proposal is based upon a petition for rulemaking from the Air Transport Association of America, a summary of which was published in the Federal Register on March 6, 1980, (45 FR 14590).

DATES: Comments must be received on or before: March 27, 1981.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 20026, 800 Independence Avenue, SW., Washington, D.C. 20591;

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Tedrick, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 22026." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Synopsis of the Proposal

The FAA is considering the amendment of § 21.93(b) of the Federal Aviation Regulations (14 CFR Part 21: the "FARs") to amend the definition of "acoustical change" as applied to turbojet engine powered, transport category large airplanes. The proposal is based upon a recommended change to the rule submitted in a petition for rulemaking under FAR Part 11 by the Air Transport Association of America ("ATA") dated January 4, 1980. A summary of that petition was published in the Federal Register for public information and comment on March 6, 1980 (45 FR 14590). Section 21.93(b) currently defines "acoustical change" as any voluntary change in the type design of an airplane that might increase the noise levels of the airplane.

The petition requested an amendment to § 21.93(b) so that temporary (less than 90 days) engine/nacelle intermixes for maintenance purposes on turbojet engine powered, transport category large airplanes would not be classified as "acoustical changes" and, thus, not be governed by the applicable requirements of § 36.7 of Part 36. Petitioner's reasons for the amendment indicate that granting of the petition would have a minimum effect on individual airplane noise and an even lesser effect, if any, on national fleet noise level; that significant cost savings would result in that it would reduce spares inventory, prevent unnecessary engine changes, permit better allocation of manpower resources, reduce industry and Government workload, and reduce the paperwork burden.

As part of the summary, the following additional questions were posed for commenter response to assist the FAA in reviewing the petition:

1. What is the potential cost savings to the operating airlines?
2. What is the potential for the reduction of paperwork for industry and government?
3. What is the potential noise impact on communities near airports?
4. What aircraft types and models are affected and to which aircraft type certificate would the airplane conform to during the temporary intermix period and after?

Summary of Public Comments

Three comments were received in response to the summary of the petition published in the Federal Register. In addition, the ATA's comments incorporated copies of comments from four ATA member airlines. The consensus appears to be that though it is difficult to estimate the total cost of the present intermix, acoustic change process for engine/nacelle, the cost is substantial. Cost ranges from thousands of dollars for some airlines to millions of dollars for others. The potential savings in paperwork is also substantial but difficult to quantify with firm figures because of the lack of predictability of the occurrence of the conditions requiring engine changes.

The ATA commented that all turbojet airplanes operated by their member airlines with the possible exception of the A-300, DC-10, and L-1011, would be affected by this proposal. The degree to which each airplane type is affected will vary from airline to airline depending on its fleet makeup.

Delta Airlines commented that its B727-232 aircraft can be operated in compliance with no more than one acoustically untreated engine/nacelle without incurring potentially penalizing takeoff weight restrictions. Manpower requirements to ensure maintaining that configuration have increased to the point where purchase of additional acoustical tailpipes at approxmiately $11,000 each are being considered as an alternative means of preventing unauthorized intermix configurations.

All four airlines commented that qualifying cost or paperwork savings was impossible. However, United offered some items of potential savings. They spent $14,000 to allow intermix on one configuration of their Boeing 727 airplanes. Many operators have aircraft of the same type, but of different age. The newer aircraft, which are certificated to FAR Part 36 noise levels, require different nacelle or engine treatment than the older aircraft. That requires duplicate spares engines and nacelles with capital costs of $10 to $15 million to support a fleet of 20 aircraft. Relaxed requirements on noise intermix constraints would allow reduction in the duplicate spares. Temporary intermix would allow reduction of spares inventory by two or three engines with an estimated savings of $2 to $3 million. Texas International also supported that estimate and claimed a possible reduction of as many as three spares at $500,000 each.

Several of the airlines provided information on their B-727 aircraft which shows the changes in the takeoff, sideline, and approach noise levels for various intermix configurations. Those data were used to show that the potential incremental noise impact on communities near airports from the proposed changes in the rule governing acoustical change approvals would be very small. The FAA estimates that the cumulative Day-Night Noise Level (L_{dn}) for those airplanes would usually rise an average less than 0.1 decibels at a medium size hub airport. The actual (L_{dn}) level measure could be higher or lower depending on the number of airplanes with one or more untreated engines/nacelles that actually operate into the airport during any given period.

The ATA also pointed out that the proposed changes would not affect safety. Each intermix configuration must have FAA approval from a physical and safety airworthiness standpoint. That would be done under the existing type certificate procedure for the airplane type design configuration and would be conformed to a previously approved configuration under appropriate authority to return the airplane to service in that configuration.

No substantive comments were received from private individuals on the petition. However, two comments were received on the need for the FAA to better administer the documentation requirements for noise certification of aircraft. The procedures applicable to type design changes provide adequate documentation to determine the noise certification status of the airplane. Any discrepancy in that documentation for any design change affects the airworthiness certification basis of the airplane and would be investigated accordingly and appropriate action would be taken.

Description of the Proposal

As requested by the petitioner, the proposed amendment applies to turbojet engine powered, transport category large airplanes. It would amend the provision concerning acoustical changes to permit, under specified conditions, the intermixing of engines or nacelles on an affected airplane. Those type designs involved in reconfiguring the airplane would be excluded from the definition of "acoustical change" (and, thereby, the Parts 21 and 36 requirements for acoustical changes for the specified engine/nacelle intermixes). It would not affect any other applicable requirements for certification of type design or airworthiness, or for operating the affected aircraft—only those governing noise level certification. Further, the proposed rule would apply not only during that period of phased compliance, during which the affected fleet of the operator consists of some airplanes that are not required to comply with the operating noise level rule under Part 91, Subpart E, but also after full compliance is required. That is, the limited exception to the acoustical changes rule for intermix would also be available after the date the operator's fleet is required to be fully in compliance with Part 36 noise standards. After that date, the operator would not need to have available sufficient quantities of acoustically treated engines/nacelles to ensure maintaining each of those airplanes in compliance with the noise requirements in those cases where the operator has selected acoustical treatment as the method of achieving compliance.

However, the proposed amendment applies to intermix only for fewer than 90 days, thereby requiring the reinstallation of a complying engine/nacelle combination (an acoustically certificated configuration at or below the otherwise applicable noise levels for the airplane) before the end of the 90 days period. Operation of the airplane after that period in the intermixed configuration would constitute an unapproved acoustical change and would be contrary to the certification requirements of the airplane.

The petitioner (ATA) requested the exception in the rule for engine/nacelle intermix "for maintenance purposes" and did not specify clearly the requirement that the airplane would be brought back into conformance with an acoustically certificated configuration shown to meet applicable noise levels within the 90-day period. Since the purpose for initiating a type design change for a particular airplane is irrelevant to the acoustical change requirements under the current rule, the FAA has considered whether the proposed exception should be limited to factors inherently extraneous to changes in type design basis of the airplane. An operator would not reasonably incur the expense of changing engines or nacelles

on an acoustically certificated airplane without a compelling purpose; thus, there appears to be little, if any, incentive to do so in order simply to avoid the otherwise applicable noise requirements for less than 90 days. Many factors dictate engine/nacelle removal and installation of another engine or nacelle, including routine and preventative maintenance or the requirements of "airworthiness." Not all of those reasons clearly fall within the traditional definition of "maintenance" addressed by the petition. The FAA believes that, as "purposes" for a type design change, they should not be dispositive of whether the exception to the acoustical change rule applies. To do so would necessitate creating additional, verifiable documentation of the purpose of the engine/nacelle change and would confuse the reasons for the change with its regulatory effect of being a type design change that might temporarily increase noise levels. The two regulatory concepts should not be mixed.

The FAA agrees with the petitioner that the paper work and documentation requirements for temporary design changes covered by the proposal are grossly disproportionate to the noise benefits they preserve for a short period such as 90 days or less. However, the proposed exception must be carefully prescribed to limit its impact on aircraft noise emissions to those clearly shown to be unwarranted in fulfilling the rule's intended purposes. Thus, the proposed exception would apply only if an engine/nacelle change accomplished on an individual airplane is temporary—that is, the airplane is brought back into conformance with the previous configuration or another configuration that is acoustically certificated at or below the otherwise applicable noise levels for that airplane within 90 days after the initial change.

It has been determined under the criteria of the Regulatory Flexibility Act that this proposed rule, at promulgation, will not have a significant impact on a substantial number of small entities.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 21.93(b) of Part 21 of the Federal Aviation Regulations (14 CFR Part 21) by revising paragraph (b)(2) to read as follows:

§ 21.93 Classification of change in type design.

* * * * *

(b) * * *

(2) Turbojet powered airplanes (regardless of category) except that for individual turbojet powered transport category large airplanes, a design change limited to an engine or nacelle change is not an acoustical change under this paragraph if, within 90 days of the initial design change, the airplane is brought into conformance with a configuration certificated under Part 36 of this chapter for that airplane as complying with the otherwise applicable acoustical change requirements of § 36.7 of Part 36 for that airplane.

* * * * *

(Secs. 313(a), 601(a), 603, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. § 1354(a), 1421(a), and 1431); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), Executive Order 11514, March 5, 1970; and 14 CFR 11.45)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on January 19, 1981.

John E. Wesler,

Director of Environment and Energy, AEE-1.

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Part IX

Environmental Protection Agency

Standards for Performance for New Stationary Sources; Revisions to General Provisions and Additions to Appendix A, and Reproposal of Revisions to Appendix B

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1625-7]

Standards of Performance for New Stationary Sources; Proposed Revisions to General Provisions and Additions to Appendix A; and Reproposal of Revisions to Appendix B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: This proposed rule (1) revises the monitoring requirements (§ 60.13) of the General Provisions, (2) adds Methods 6A and 6B to Appendix A, and (3) reproposes revisions to Performance Specifications 2 and 3 to Appendix B of 40 CFR Part 60. The proposed revisions to § 60.13 are being made to make this section consistent with the proposed revisions to Appendix B. Methods 6A and 6B are being proposed because they simplify the determination of the SO_2 emission rates in terms of ng/J. Performance Specifications 2 and 3 revisions are being reproposed because the changes that have been made to the performance specifications as a result of comments received on the original proposal of October 10, 1979 (44 FR 58602) are substantial and involve an entirely new concept.

DATES: *Comments.* Comments must be received on or before March 27, 1981.

Public Hearing. A public hearing will be held on February 19, 1981 beginning at 9 a.m.

Request to Speak at Hearings. Persons wishing to present oral testimony must contact EPA by February 12, 1981 (1 week before hearing).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number OAQPS-79-4, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at Emission Measurement Labatory, R.T.P. North Carolina. Persons wishing to present oral testimony should notify Ms. Vivian Phares, Emission Measurement Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5423.

Docket. Docket Number OAQPS-79-4 (Performance Specifications 2 and 3) and Docket Number A-80-30 (Methods 6A and 6B), containing supporting information used in developing the proposed rulemaking are located in the U.S. Enviromental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Roger T. Shigehara (MD-19). U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: The discussion in this section has been divided into three separate parts. Part A discusses proposed changes to the General Provisions of 40 CFR Part 60, Part B discusses the addition of proposed Methods 6A and 6B to Appendix A, and Part C discusses reproposal of revisions to Performance Specifications 2 and 3 to Appendix B.

Part A

The proposed revisions to § 60.13 of the General Provisions are being made to make this section consistent with the proposed revisions to Appendix B. Since the reproposal to Appendix B uses the concept of evaluating the continuous emission monitors as a system, based on relative accuracy test results, the use of certified cylinder gases, optical filters, or gas cells is not necessary. The requirement for quantification of the zero and span drifts is not a change, but a clarification of what is required under the existing performance specifications.

Part B

Two reference methods (Methods 6A and 6B) are proposed. Method 6A, "Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources," combines the sampling and analysis of SO_2 and CO_2. The SO_2 is collected in a hydrogen peroxide solution and analyzed by the barium-thorin titration procedure described in Method 6. The CO_2 is collected by a solid absorbent and analyzed gravimetrically. The sample gas volume is measured to allow determination of SO_2 concentration, CO_2 concentration, moisture, and emission rate from combustion sources in ng/J. If the only measurement needed is in terms of emission rate or if the CO_2 and moisture concentrations are not needed, e.g., to convert NO_x concentration to ng/J, the volume meter is not required. It is intended that Method 6A be used as an alternative to Methods 6 and 3 for the purpose of determining SO_2 emission rates in ng/J.

Method 6B, "Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions from Fossil Fuel Combustion Sources," employs the same sampling train and analysis procedures as Method 6A, but the operation of the train is controlled on an intermittent basis by a timer or on a continuous basis by using a low, constant flow-rate pump. This allows an extended sampling time period and the determination of an average value for that time period of SO_2 concentration, CO_2 concentration, and emission rate from combustion sources in ng/J. Method 6B is proposed as an acceptable procedure for compliance with § 60.47a (f) of 40 CFR Part 60, Subpart Da. This paragraph (f) requires that in the event of CEMS breakdown, emission data will be obtained by using other monitoring systems or reference methods approved by the Administrator.

Part C

Revisions to Performance Specifications 2 and 3 for the initial evaluation of continuous emission monitoring systems (CEMS) for SO_2, NO_x, and diluent gases were proposed on October 10, 1979 (44 FR 58602). Comments received as a result of this proposal led to reevaluation of the provisions and a change in the overall approach to the performance specifications. The reproposed performance specifications deemphasize instrument equipment specifications and add emphasis to the evaluation of the CEMS and its location as a system. The specification requirements are limited to calibration drift tests and relative accuracy tests. The acceptability limits for relative accuracy remain the same as in the previously proposed revisions to the performance specifications.

CEMS guidelines will also be published in a separate document at the time of proposal to provide vendors, purchasers, and operators of CEMS with supplementary equipment and performance specifications. The guidelines will contain additional procedures and specifications that may provide further evaluation of the CEMS beyond that required by Performance Specifications 2 and 3, e.g., response time, 2-hour zero and calibration drifts, sampling locations, and calibration value analyses.

Applicability

The proposed revisions would apply to all CEMS currently subject to Performance Specifications 2 and 3. These include sources subject to standards of performance that have

already been promulgated and sources subject to Appendix P to 40 CFR Part 51. Since the requirements of the reproposed performance specification revisions are limited to daily calibration drift tests and relative accuracy tests, existing CEMS that met the specifications of the current Performance Specifications 2 and 3 also meet the requirements of these revised specifications and, therefore, do not require retesting.

This reproposal has retained the definition of a "continuous emission monitoring system" and includes the diluent monitor, if applicable. This definition requires the relative accuracy of the CEMS to be determined in terms of the emission standard, e.g., mass per unit calorific value for fossil fuel-fired steam generators. Several commenters felt that the limits of relative accuracy should be relaxed from the present 20 percent because of the addition of the diluent analyzer output. Others added that errors with the manual reference methods could increase the possibility of poor relative accuracy determinations now that an additional measurement is required. The Administrator has reviewed a number of relative accuracy tests and has concluded that the variations in the manual reference method determinations are not the major cause of failure, but that the difference between the mean of the reference method and the CEMS values is the most probable cause. This situation is correctable.

Comments on Proposal

Numerous commenters noted that the proposed revisions go far beyond clarification and considered them as significant changes. A large part of this concern was because they felt that many existing CEMS were not installed according to the proposed installation specifications. In addition, many commenters felt the need for greater flexibility in selecting alternative CEMS measurement locations. Several commenters desired the inclusion of test procedures to evaluate single-pass, in situ CEMS. Others objected to the length and cost of testing. Opposing views were presented on the need for stratification checks. Many commenters dealt with specific parts of the proposal and a few raised issues beyond the scope of the revisions. Because the Administrator has changed the overall approach to performance specifications as mentioned in the beginning of Part C, many of these comments no longer apply and many of the objections have been resolved.

The quality assurance requirements for CEMS and associated issues were raised by many commenters. Most commenters stated that there was a need for EPA to issue guidelines or requirements for quality assurance. EPA is developing such procedures, and they will be published later this year or early next year as Appendix E to 40 CFR Part 60. Some commenters erroneously assumed that the quality assurance procedures were an integral part of the specifications. Although related, this specification should be evaluated on the basis of its adequacy in evaluating a CEMS after their initial installation.

The reproposed performance specifications include a provision that the relative accuracy of a CEMS must be within ±20 percent of the mean reference value or ±10 percent of the applicable standard, whichever is greater. Several commenters endorsed this change, while one felt the change to allow an accuracy of ±10 percent of the applicable standard is too lenient at low emission rates. The Administrator feels that it is restrictive to require a high degree of relative accuracy when the actual emission levels are equivalent to 50 percent or less of the applicable emission standard.

Request for Comments on Other Views

A number of suggestions were received which were not incorporated in these revisions. Because they represent differing views, EPA requests comments on them to determine what course of action should be taken in the final rule making. The suggestions are as follows:

1. Section 60.13(b) was revised to exclude the mandatory 7-day conditioning period used to verify the CEMS operational status. Once commenter feels that the mandatory conditioning period should not only be retained, but should be made longer depending on how the CEMS is used (i.e., for operation and maintenance requirements or for compliance/enforcement purposes) as follows:

a. The presently required 7-day conditioning period should be retained for CEMS used for operation and maintenance requirements.

b. If the CEMS is used for compliance/enforcement purposes, a 30-day conditioning period should be required and that the relative accuracy tests should be spread over 3 days instead of one.

c. All CEMS, whether for operation and maintenace requirements or for compliance/enforcement purposes, should be installed and operational for 60 or 90 days prior to the initial NSPS test.

If the above are done, the commenter feels that (1) the owner/operator/agency would be aware of the progress made by the control system in complying with the emission standards, (2) there would be a greater chance of the CEMS passing the performance specification test and of the facility complying with the regulations within the time requirements of § 60.8, and (3) the operator/vendor/tester/agency would minimize loss of valuable resources and time.

2. Once commenter feels that § 60.13(c) should require all CEMS Performance Specification Tests to be done concurrent with NSPS tests under § 60.8. This would streamline the process and save resources for owners and agencies alike.

3. Section 60.13(d) was revised to delete the requirements listed under (d)(1) and (d)(2) because EPA felt that the relative accuracy test would validate the CEMS system which includes the calibration gases or devices. One commenter, however, feels that the requirement to introduce zero and span gas mixtures into the measurement system at the probe at the stack wall should be retained and conducted in such a way that the entire system including the sample interface is checked. This requirement would provide a means to check the CEMS on a daily basis. In addition, the commenter feels that the requirement for checking the calibration gases at 6-month intervals may be deleted provided that the values used for replacement gas cylinders, calibration gas cells or optical filters are approved by the control agency.

4. One commenter feels that the following specifications should be added in Section 4 of Performance Specification 2:

a. The CEMS relative accuracy should be relaxed by using a sliding function of the allowable emission standard and/or the reference method tests for very low emission limits, e.g., 0.10 pounds per 10^6 Btu emission limit under PSD permits.

b. Each new compliance/enforcement CEMS installed after 1983 must have an external means of checking the calibration of the instrument using separate calibration/audit materials.

c. A minimum data recovery specification of at least 18 hours in at least 22 out of 30 days (or similar) should be included. This would mean that a performance specification test would not be officially completed until after the 30 days.

5. One commenter feels that EPA should consider using Section 7.1 of Performance Specification 2 to specify that during the CEMS performance specification test all data be recorded both in separate units of measurements (ppm and percent CO_2 or O_2) as well as combined units of the standard.

6. In Performance Specification 2, the definition of "Relative Accuracy" is incorrect. Instead of a degree of correctness, it is actually a measure of "relative error." One commenter feels that "relative accuracy" should be changed to "relative error."

7. In Section 7.3 of Performance Specification 2, the tester is allowed to reject up to three samples provided that the total number of test results used to determine the relative accuracy is greater than or equal to nine. EPA had considered using statistical techniques to reject outliers, but found that these techniques were too restrictive. One commenter feels that statistical techniques should be used. At a minimum, the commenter feels that the control agencies should be consulted before any data is rejected.

Miscellaneous

Authority: This proposed rule making is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, and 7601(a)).

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

It is proposed that §§ 60.13, 60.46, and 60.47a, Appendix A, and Appendix B of 40 CFR Part 60 be amended as follows:

1. By revising § 60.13(b), 60.13(c)(2)(ii), and 60.13(d), by removing subparagraphs (1), (2), and (3) of § 60.13(b), and by removing subparagraphs (1), (2), and (3) of § 60.13(d) as follows:

§ 60.13 Monitoring requirements.

* * * * *

(b) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under § 60.8. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(c) * * *

(2) * * *

(ii) Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within ±20 percent with a confidence level of 95 percent. The performance tests and calculation procedures set forth in Performance Specification 2 of Appendix B shall be used for demonstrating compliance with this specification.

* * * * *

(d) Owners and operators of all continuous emission monitoring systems installed in accordance with the provisions of this part shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of such systems unless the manufacturer recommends adjustments at shorter intervals in which case such recommendations shall be followed. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift of 24-hour span drift limits of the applicable performance specifications in Appendix B are exceeded. The amount of excess zero and span drift measured at the 24-hour interval checks shall be quantified and recorded. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero and span drift adjustments except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity. Unless otherwise approved by the Administrator, the following procedures shall be followed for continuous monitoring systems measuring opacity of emissions. Minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale(span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

* * * * *

2. By revising § 60.46(a)(4) as follows:

§ 60.46 Test methods and procedures.

(a) * * *

(4) Method 6 for concentration of SO_2. Method 6A may be used whenever Methods 6 and 3 data are used to determine the SO_2 emission rate in ng/J, and

* * * * *

3. By revising § 60.47a(h)(1) as follows:

§ 60.47a Emission monitoring.

* * * * *

(h) * * *

(1) Reference Methods 3, 6, and 7 as applicable, are used. Method 6B may be used whenever Methods 6 and 3 data are used to determine the SO_2 emission rate in ng/J. The sampling location(s) are the same as those used for the continuous monitoring system.

* * * * *

4. By adding to Appendix A of 40 CFR Part 60 two new methods, Methods 6A and Method 6B, to read as follows:

Appendix A—Reference Test Methods

* * * * *

Method 6A—Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources

1. *Applicability and Principle*

1.1 *Applicability.* This method applies to the determination of sulfur dioxide (SO_2) emissions from fossil fuel combustion sources in terms of concentration (mg/m^3) and in terms of emission rate (ng/J) and to the determination of carbon dioxide (CJ_2) concentration (percent). Moisture, if desired, may also be determined by this method.

The minimum detectable limit, the upper limit, and the interferences of the method for the measurement of SO_2 are the same as for Method 6. For a 20-liter sample, the method has a precision of 0.5 percent CO_2 for concentrations between 2.5 and 25 percent CO_2 and 1.0 percent moisture for moisture concentrations greater than 5 percent.

1.2 *Principle.* The principle of sample collection is the same as for Method 6 except that moisture and CO_2 are collected in addition to SO_2 in the same sampling train. Moisture and CO_2 fractions are determined gravimetrically.

2. *Apparatus*

2.1 *Sampling.* The sampling train is shown in Figure 6A–1; the equipment required is the same as for Method 6, except as specified below:

2.1.1 *Midget Impingers.* Two 30-ml midget impingers with a 1-mm restricted tip.

2.1.2 *Midget Bubbler.* One 30-ml midget bubbler with an unrestricted tip.

2.1.3 CO_2 *Absorber.* One 250-ml Erlenmeyer bubbler with an unrestricted tip, or equivalent.

2.2 *Sample Recovey and Analysis.* The equipment needed for sample recovery and analysis is the same as required for Method 6. In addition, a balance to measure within 0.05 g is needed for analysis.

3. *Reagents*

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. Where such specifications are not available, use the best available grade.

3.1 *Sampling.* The reagents required for sampling are the same as specified in Method 6, except that 80 percent isopropanol and 10 percent potassium iodide solutions are not required. In addition, the following reagents are required:

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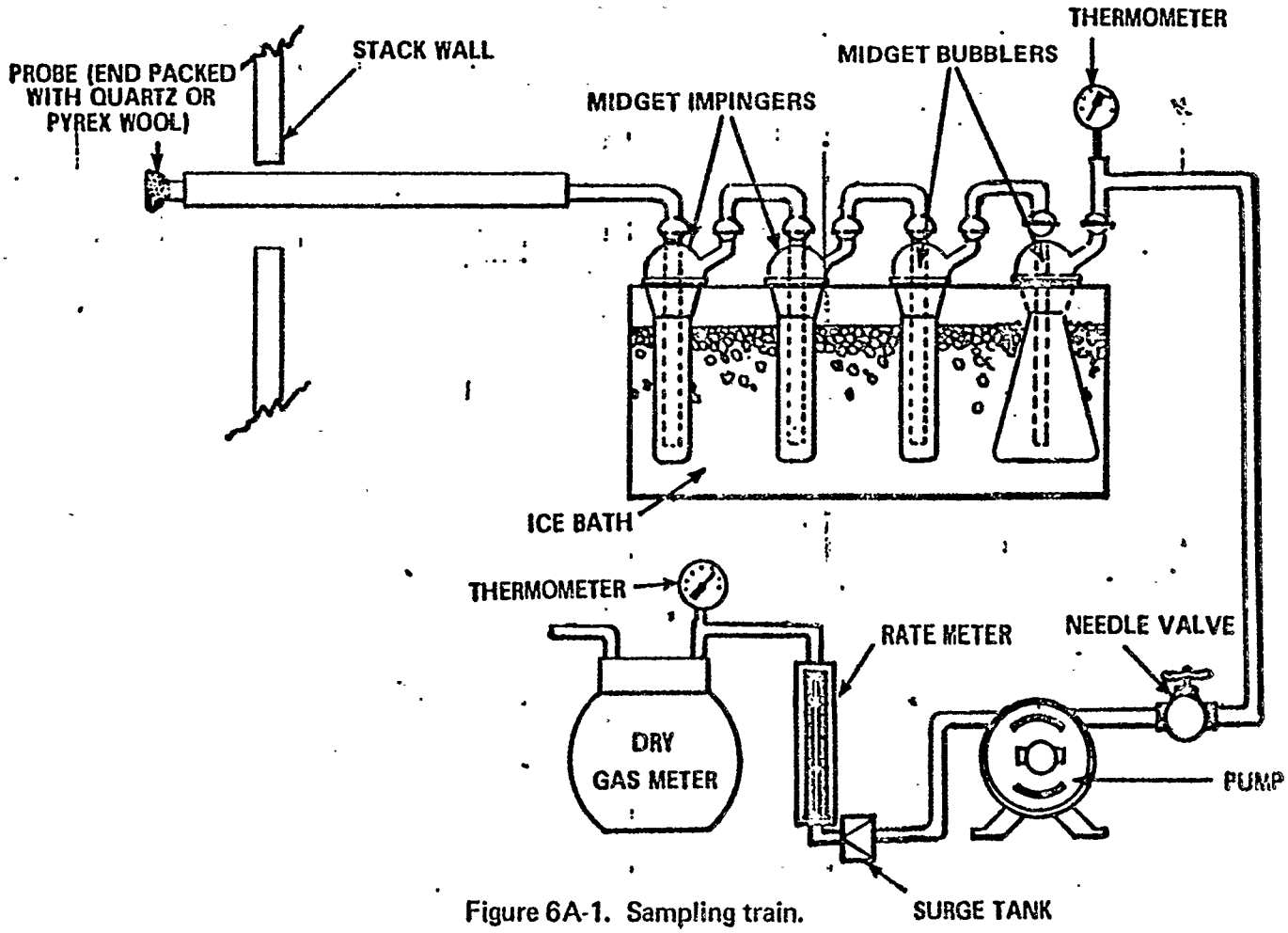

Figure 6A-1. Sampling train.

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3.1.1 *Drierite.** Anhydrous calcium sulfate ($CaSO_4$) desiccant, 8 mesh.

3.1.2. *Ascarite.* Sodium hydroxide coated asbestos for absorption of CO_2, 8 to 20 mesh.

3.2 *Sample Recovery and Analysis.* The reagents needed for sample recovery and analysis are the same as for Method 6, Sections 3.2 and 3.3, respectively.

4. *Procedure*

4.1 *Sampling*

4.1.1 *Preparation of Collection Train.* Measure 15 ml of 3 percent hydrogen peroxide into each of the first two midget impingers. Into the midget bubbler, place about 25 g of drierite. Clean the outsides of the impingers and the drierite bubbler and weigh (at room temperature, ~ 20° C) to the nearest 0.1 g. Weigh the three vessels simultaneously and record this initial mass.

Place a small amount of glass wool in the Erlenmeyer bubbler. The glass wool should cover the entire bottom of the flask and be about 1-cm thick. Place about 100 g of ascarite on top of the glass wool and carefully insert the bubbler top. Plug the bubbler exhaust leg and invert the bubbler to remove any ascarite fom the bubbler tube. A wire may be useful in assuring that no ascarite remains in the tube. With the plug removed and the outside of the bubbler cleaned, weigh (at room temperature (at room temperature, ~ 20° C), to the nearest 0.1 g. Record this initial mass.

Assemble the train as shown in Figure 6A–1. Adjust the probe heater to a temperature sufficient to prevent water condensation. Place crushed ice and water around the impingers and bubblers.

Note.—For stack gas streams with high particulate loadings, an in-stack or heated out-of-stack glass fiber mat filter may be used in place of the glass wool plug in the probe.

4.1.2 *Leak-Check Procedure and Sample Collection.* The leak-check procedure and sample collection procedure are the same as specified in Method 6, Sections 4.1.2 and 4.1.3, respectively.

4.2 *Sample Recovery.*

4.2.1 *Moisture Measurement.* Disconnect the peroxide impingers and the drierite bubbler from the sample train. Allow time (about 10 minutes) for them to reach room temperature, clean the outsides and then weigh them simultaneously in the same manner as in Section 4.1.1. Record this final mass.

4.2.2 *Peroxide Solution.* Pour the contents of the midget impingers into a leak-free polyethylene bottle for shipping. Rinse the two midget impingers and connecting tubes with deionized distilled water, and add the washings to the same storage container.

*Mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.

4.2.3 CO_2 *Absorber.* Allow the Erlenmeyer bubbler to warm to room temperature (about 10 minutes), clean the outside, and weigh to the nearest 0.1 g in the same manner as in Section 4.1.1. Record this final mass and discard the used ascarite.

4.3 *Sample Analysis.* The sample analysis procedure for SO_2 is the same as specified in Method 6, Section 4.3.

5. *Calibration*

The calibrations and checks are the same as required in Method 6, Section 5.

6. *Calculations*

Carry out calculations, retaining at least 1 extra decimal figure beyond that of the acquired data. Round off figures after final calculation. The calculation nomenclature and procedure are the same as specified in Method 6 with the addition of the following:

6.1 Nomenclature.

C_{H_2O} = Concentration of moisture, percent.

co_2 = Concentration of CO_2, dry basis, percent.

m_{wi} = Initial mass of peroxide impingers and drierite bubbler, g.

m_{wf} = Final mass of peroxide impingers and drierite bubbler, g.

m_{ai} = Initial mass of ascarite bubbler, g.

m_{af} = Final mass of ascarite bubbler, g.

$V_{co_2(std)}$ = Standard equivalent volume of CO_2 collected, dry basis, m^3.

6.2 CO_2 volume collected, corrected to standard conditions.

$$V_{co_2(std)} = 5.467 \times 0^{-4}(m_{af} - m_a) \quad \text{(Eq. 6A–1)}$$

6.3 Moisture volume collected, corrected to standard conditions.

$$V_{w(std)} = 1.336 \times 10^{-3} (m_{wf} - m_{wi}) \quad \text{(Eq. 6A-2)}$$

6.4 SO_2 concentration.

$$C_{SO_2} = 32.03 \frac{(V_t - V_{tb})\, N\left(\frac{V_{soln}}{V_a}\right)}{V_{m(std)} + V_{CO_2(std)}} \quad \text{(Eq. 6A-3)}$$

6.5 CO_2 concentration.

$$C_{CO_2} = \frac{V_{CO_2(std)}}{V_{m(std)} + V_{CO_2(std)}} \times 100 \quad \text{(Eq. 6A-4)}$$

6.6 Moisture concentration.

$$C_{H_2O} = \frac{V_{H_2O(std)}}{V_{m(std)} + V_{H_2O(std)} + V_{CO_2(std)}} \quad \text{(Eq. 6A-5)}$$

7. *Emission Rate Procedure*

If the only emission measurement desired is in terms of emission rate of SO_2 (ng/J), an abbreviated procedure may be used. The differences between Method 6A and the abbreviated procedure are described below.

7.1 *Sample Train.* The sample train is the same as shown in Figure 6A–1 and as described in Section 4, except that the dry gas meter is not needed.

7.2 *Preparation of the collection train.* Follow the same procedure as in Section 4.1.1, except that the peroxide impingers and drierite bubbler need not be weighed before or after the test run.

7.3 *Sampling.* Operate the train as described in Section 4.1.3, except that dry gas

meter readings, barometric pressure, and dry gas meter temperatures need not be recorded.

7.4 *Sample Recovery.* Follow the procedure in Section 4.2, except that the peroxide impingers and drierite bubbler need not be weighed.

7.5 *Sample Analysis.* Analysis of the peroxide solution is the same as described in Section 4.3.

7.6 Calculations.

7.6.1 SO_2 mass collected.

$$m_{SO_2} = 32.03\ (V_t - V_{tb})\ N\left(\frac{V_{soln}}{V_a}\right) \qquad \text{(Eq. 6A-7)}$$

Where:

m_{SO_2} = Mass of SO_2 collected, mg.

7.6.2 Sulfur dioxide emission rate.

$$E_{SO_2} = F_c\ (1.829 \times 10^9)\ \frac{m_{SO_2}}{(m_{af} - m_{ai})} \qquad \text{(Eq. 6A-8)}$$

Where:

$E_{SO}\mu$=Emission rate of SO_2, ng/J.

F_c=Carbon F factor for the fuel burned, m^3/J, from Method 19.

8. *Bibliography*

8.1 Same as for Method 6, citations 1 through 8, with the addition of the following:

8.2 Stanley, Jon and P.R. Westlin. An Alternate Method for Stack Gas Moisture Determination. Source Evaluation Society Newsletter. *Volume 3, Number 4.* November 1978.

8.3 Whittle, Richard N. and P.R. Westlin. Air Pollution Test Report: Development and Evaluation of an Intermittent Integrated SO_2/CO_2 Emission Sampling Procedure. Environmental Protection Agency, Emission Standard and Engineering Division, Emission Measurement Branch. Research Triangle Park, North Carolina. December 1979. 14 pages.

Method 6B—Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions From Fossil Fuel Combustion Sources

1. *Applicability and Principle*

1.1 Applicability. This method applies to the determination of sulfur dioxide (SO_2) emissions form combustion sources in terms of concentration (mg/M^3) and emission rate (ng/J), and for the determination of carbon dioxide (CO_2) concentration (percent) on a daily (24 hours) basis.

The minimum detectable limit, upper limit, and the interferences for SO_2 measurements are the same as for Method 6. For a 20-liter sample, the method has a precision of 0.5 percent CO_2 for concentrations between 2.5 and 25 percent CO_2.

1.2 Principle. A gas sample is extracted from the sampling point in the stack intermittently over a 24-hour or other specified time period. Sampling may also be conducted continuously if the apparatus and procedure are modified (see the note in Section 4.1.1). The SO_2 and CO_2 are separated and collected in the sampling train. The SO_2 fraction is measured by the barium-thorin titration method and CO_2 is determined gravimetrically.

2. *Apparatus*

The equipment required for this method is the same as specified for Method 6A, Section 2, with the addition of an industrial timer-switch designed to operate in the "on" position from 3 to 5 continuous minutes and "off" the remaining period over a repeating, 2-hour cycle.

3. *Reagents*

All reagents for sampling and analysis are the same as described in Method 6A, Section 3.

4. *Procedure*

4.1 *Sampling*

4.1.1 *Preparation of Collection Train.* Preparation of the sample train is the same as described in Method 6A, Section 4.1.4 with the addition of the following:

Assemble the train as shown in Figure 6B–1. The probe must be heated to a temperature sufficient to prevent water condensation and must include a filter (either in-stack, out-of-stack, or both) to prevent particulate entrainment in the perioxide impingers. The electric supply for the probe heat should be continuous and separate from the timed operation of the sample pump.

Adjust the timer-switch to operate in the "on" position form 2 to 4 minutes on a 2-hour repeating cycle. Other timer sequences may be used provided there are at least 12 equal, evenly spaced periods of operation over 24 hours and the total sample volume is between 20 and 40 liters for the amounts of sampling reagents prescribed in this method.

Add cold water to the tank until the impingers and bubblers are covered at least two-thirds of their length. The impingers and bubbler tank must be covered and protected from intense heat and direct sunlight. If freezing conditions exist, the impinger solution and the water bath must be protected.

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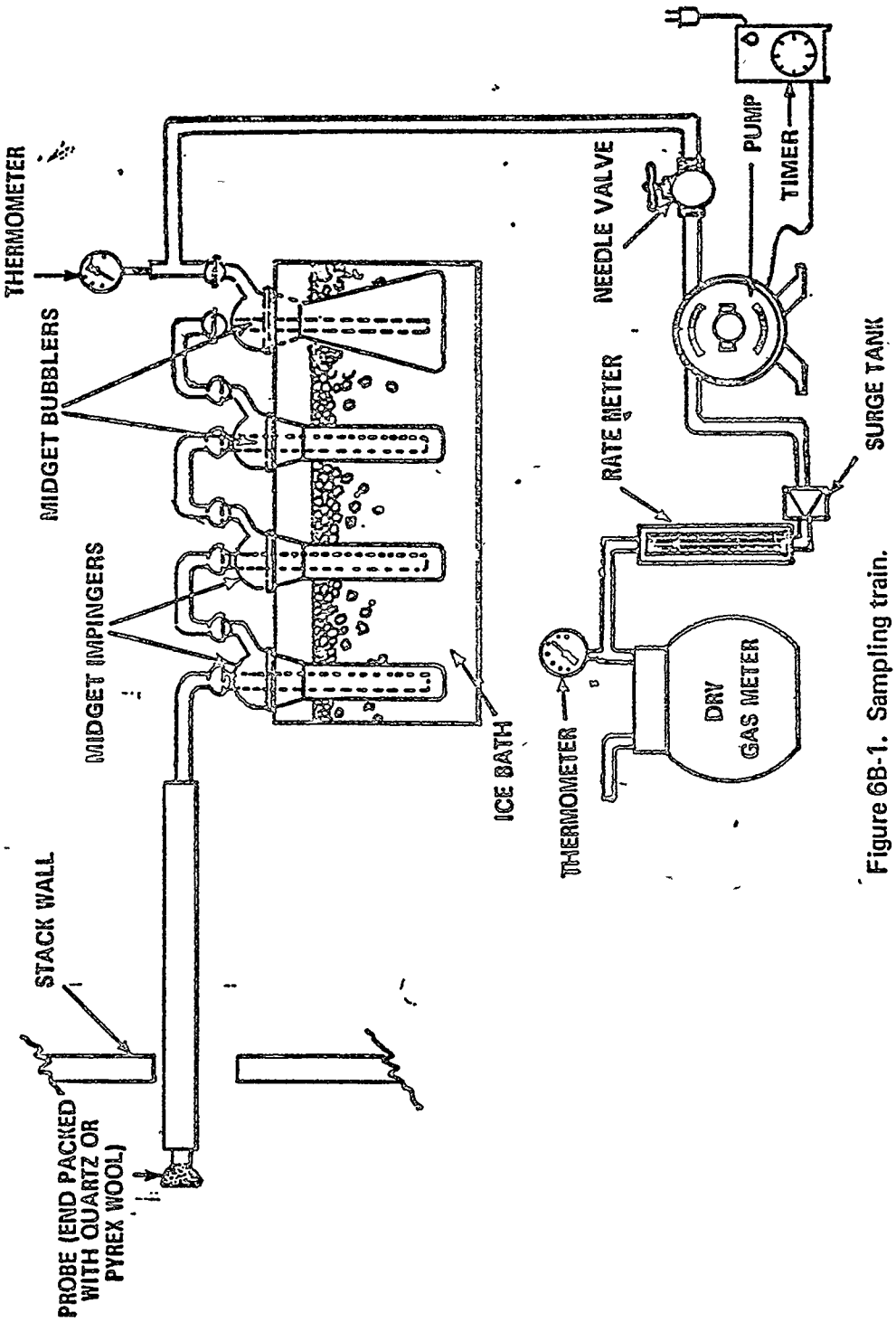

Figure 6B-1. Sampling train.

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Note.—Sampling may be conducted continuously if a low flow-rate sample pump (>24ml/min) is used. Then the timer-switch is not necessary. In addition, if the sample pump is designed for constant rate sampling, the rate meter may be deleted. The total gas volume collected should be between 20 and 40 liters for the amounts of sampling reagents prescribed in this method.

4.1.2 *Leak-Check Procedure.* The leak-check procedure is the same as describedf in Method 6, Section 4.1.2.

4.1.3 *Sample Collection.* Record the initial dry gas meter reading. To begin sampling, position the tip of the probe at the sampling point, connect the probe to the first impinger (or filter), and start the timer and the sample pump. Adjust the sample flow to a constant rate of approximately 1.0 liter/min as indicated by the rotameter. Assure that the timer is operating as intended, i.e., in the "on" position 3 to 5 minutes at 2-hour intervals, or other time interval specified.

During the 24-hour sampling period, record the dry gas meter temperature between 9:00 a.m. and 11:00 a.m., and the barometric pressure.

At the conclusion of the run, turn off the timer and the sample pump, remove the probe from the stack, and record the final gas meter volume reading. Conduct a leak check as described in Section 4.1.2. If a leak is found, void the test run or use procedures acceptable to the Administrator to adjust the sample volume for leakage. Repeat the steps in this Section (4.1.3) for successive runs.

4.2 *Sample Recovery.* The procedures for sample recovery (moisture measurement, peroxide solution, and ascarite bubbler) are the same as in Method 6A, Section 4.2.

4.3 *Sample Analysis.* Analysis of the peroxide impinger solutions is the same as in Method 6, Section 4.3.

5. *Calibration*

5.1 *Metering System.*

5.1.1 *Initial Calibration.* The initial calibration for the volume metering system is the same as for Method 6, Section 5.1.1.

5.1.2 *Periodic Calibration Check.* After 30 days of operation of the test train conduct a calibration check as in Section 5.1.1 above, except for the following variations: (1) The leak check is not be conducted, (2) three or more revolutions of the dry gas meter may be used, and (3) only two independent runs need be made. If the calibration factor does not deviate by more than 5 percent from the initial calibration factor determined in Section 5.1.1, then the dry gas meter volumes obtained during the test series are acceptable and use of the train can continue. If the calibration factor deviates by more than 5 percent, recalibrate the metering system as in Section 5.1.1; and for the calculations for the preceding 30 days of data, use the calibration factor (initial or recalibration) that yields the lower gas volume for each test run. Use the latest calibration factor for succeeding tests.

5.2 *Thermometers.* Calibrate against mercury-in-glass thermometers initially and at 30-day intervals.

5.3 *Rotameter.* The rotameter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instruction.

5.4 *Barometer.* Calibrate against a mercury barometer initially and at 30-day intervals.

5.5 *Barium Perchlorate Solution.* Standardize the barium perchlorate solution against 25 ml of standard sulfuric acid to which 100 ml of 100 percent isopropanal has been added.

6. *Calculations*

The nomenclature and calculation procedures are the same as in Method 6A with the following exceptions:

P_{bar}=Initial barometric pressure for the test period, mm Hg.

T_m=Absolute meter temperature for the test period, °K.

7. *Emission Rate Procedure*

The emission rate procedure is the same as described in Method 6A, Section 7, except that the timer is needed and is operated as described in this method.

8. *Bibliography*

The bibliography is the same as described in Method 6A, Section 8.

* * * * *

5. By revising Performance 2 and Performance 3 of Appendix B of 40 CFR Part 60 to read as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources

1. *Applicability and Principle*

1.1 *Applicability.* This specification is to be used for evaluating the acceptability of SO_2 and NO_x continuous emission monitoring systems (CEMS) after the initial installation and whenever specified in an applicable subpart of the regulations. The CEMS may include, for certain stationary sources, diluent (O_2 or CO_2) monitors.

1.2 *Principle.* Installation and measurement location specifications, performance and equipment specifications, test procedures, and data reduction procedures are included in this specification. Reference method (RM) tests and calibration drift tests are conducted to determine conformance of the CEMS with the specification.

2. *Definitions*

2.1 *Continuous Emission Monitoring System (CEMS).* The total equipment required for the determination of a gas concentration or emission rate. The system consists of the following major subsystems:

2.1.1 *Sample Interface.* That portion of the CEMS that is used for one or more of the following: Sample acquisition, sample transportation, and sample conditioning, or protection of the monitor from the effects of the stack effluent.

2.1.2 *Pollutant Analyzer.* That portion of the CEMS that senses the pollutant gas and generates an output that is proportional to the gas concentration.

2.1.3 *Diluent Analyzer (if applicable).* That portion of the CEMS that senses the diluent gas (e.g., CO_2 or O_2) and generates an output that is proportional to the gas concentration.

2.1.4 *Data Recorder.* That portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may include automatic data reduction capabilities.

2.2 *Point CEMS.* A CEMS that measures the gas concentration either at a single point or along a path that is equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section.

2.3 *Path CEMS.* A CEMS that mesures the gas concentration along a path that is greater than 10 percent of the equivalent diameter of the stack or duct cross section.

2.4 *Span Value.* The upper limit of a gas concentration measurement range that is specified for affected source categories in the applicable subpart of the regulations.

2.5 *Relative Accuracy. (RA).* The absolute mean difference between the gas concentration or emission rate determined by the CEMS and the value determined by the reference method(s) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the reference method (RM) tests or the applicable emission limit.

2.6 *Calibration Drift (CD).* The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.7 *Centroidal Area.* A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross-sectional area.

2.8 *Representative Results.* As defined by the RM test procedure outlined in this specification.

3. *Installation and Measurement Location Specifications*

3.1 *CEMS Installation and Measurement Location.* Install the CEMS at an accessible location where the pollutant concentration or emission rate measurements are directly representative or can be corrected so as to be representative of the total emissions from the affected facility. Then select representative measurement points or paths for monitoring such that the CEMS will pass the relative accuracy (RA) test (see Section 7). If the cause of failure to meet the RA test is determined to be the measurement location, the CEMS may be required to be relocated.

Suggested measurement locations and points or paths are listed below; other locations and points or paths may be less likely to provide data that will meet the RA requirements.

3.1.1 *CEMS Location.* It is suggested that the measurement location be at least two equivalent diameters downstream from the nearest control device or other point at which a change in the pollutant concentration or emission rate may occur and at least a half equivalent diameter upstream from the effluent exhaust.

3.1.2 *Point CEMS.* It is suggested that the measurement point be (1) no less than 1.0 meter from the stack or duct wall, or (2) within or centrally located over the centroidal area of the stack or duct cross section.

3.1.3 *Path CEMS.* It is suggested that the effective measurement path (1) be totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross-sectional area, or (3) be centrally located over any part of the centroidal area.

3.2 *RM Measurement Location and Traverse Points.* Select an RM measurement point that is accessible and at least two equivalent diameters downstream from the nearest control device or other point at which a change in the pollutant concentration or emission rate may occur and at least a half equivalent diameter upstream from the effluent exhaust. The CEMS and RM locations need not be the same.

Then select traverse points that assure acquisition of representative samples over the stack or duct cross section. The minimum requirements are as follows: Establish a "measurement line" that passes through the centroidal area. If this line interferes with the CEMS measurements, displace the line up to 30 cm (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area. Locate three traverse points at 16.7, 50.0, and 83.3 percent of the measurement line. If the measurement line is longer than 2.4 meters, the three traverse points may be located on the line at 0.4, 1.2, and 2.0 meters from the stack or duct wall. The tester may select other traverse points, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section. Conduct all necessary RM tests within 3 cm (but no less than 3 cm from the stack or duct wall) of the traverse points.

4. *Performance and Equipment Specifications*

4.1 *Instrument Zero and Span.* The CEMS recorder span must be set at 90 to 100 percent of recorder full-scale using a span level of 90 to 100 percent of the span value (the Administrator may approve other span levels). The CEMS design must also allow the determination of calibration drift at the zero and span level points on the calibration curve. If this is not possible or is impractical, the design must allow these determinations to be conducted at a low-level (0 to 50 percent of span value) point and at a high-level (80 to 100 percent of span value) point. In special cases, if not already approved, the Administrator may approve a single-point calibration-drift determination.

4.2 *Calibration Drift.* The CEMS calibration must not drift or deviate from the reference value of the gas cylinder, gas cell, or optical filter by more than 2.5 percent of the span value. If the CEMS includes pollutant and diluent monitors, the calibration drift must be determined separately for each in terms of concentrations (see Performance Specification 3 for the diluent specifications).

4.3 *CEMS Relative Accuracy.* The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of the units of the emission standard or 10 percent of the applicable standard, whichever is greater.

5. *Performance Specification Test Procedure*

5.1 *Pretest Preparation.* Install the CEMS and prepare the RM test site according to the specifications in Section 3, and prepare the CEMS for operation according to the manufacturer's written instructions.

5.2 *Calibration Drift Test Period.* While the affected facility is operating at more than 50 percent capacity, or as specified in an applicable subpart, determine the magnitude of the calibration drift (CD) once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Section 6. To meet the requirement of Section 4.2, none of the CD's must exceed the specification.

5.3 *RA Test Period.* Only after the CEMS passes the CD test, conduct the RA test according to the procedure given in Section 7 while the affected facility is operating at more than 50 percent capacity, or as specified in an applicable subpart. To meet the specifications, the RA must be equal to or less than 20 percent or 10 percent of the applicable standard, whichever is greater. For instruments that use common components to measure more than one effluent gas constituent, all channels must simultaneously pass the RA requirement, unless it can be demonstrated that any adjustments made to one channel did not affect the others.

6. *CEMS Calibration Drift Test Procedure*

The CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration or emission rate. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and/or calibration settings, conduct the CD test immediately before these adjustments.

Conduct the CD test at the two points specified in Section 4.1. Introduce to the CEMS the reference gases, gas cells, or optical filters (these need not be certified). Record the CEMS response and subtract this value from the reference value (see example data sheet in Figure 2-1).

If an increment addition procedure is used to calibrate the CEMS, a single-point CD test may be used as follows: Use an increment cell or calibration gas ith a value that will provide a total CEMS response (i.e., stack plus cell concentrations) between 80 and 95 percent of the span value. Compare the difference between the measured CEMS response and the expected CEMS response with the increment value to establish the CD.

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	Day	Date and time	Calibration value	Monitor value	Difference
Low-level					
High-level					

Figure 2-1. Calibration drift determination.

BILLING CODE 6560-26-C

Relative Accuracy Test Procedure

7.1 *Sampling Strategy for RM Tests.* Conduct the RM tests such that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. Although it is preferable to conduct the diluent (if applicable), moisture (if needed), and pollutant measurements simultaneously, the diluent and moisture measurements that are taken within a 30- to 60-minute period, which includes the pollutant measurements, may be used to calculate dry pollutant concentration and emission rate.

In order to correlate the CEMS and RM data properly, mark the beginning and end of each RM test period of each run (including the exact time of the day) on the CEMS chart recordings or other permanent record of output. Use the following strategies for the RM tests:

7.1.1 For integrated samples, e.g., Method 6 and Method 4, make a sample traverse of at least 21 minutes, sampling for 7 minutes at each traverse point.

7.1.2 For grab samples, e.g., Method 7, take one sample at each traverse point, scheduling the grab samples so that they are taken simultaneously (within a 3-minute period) or are an equal interval of time apart over a 21-minute (or less) period.

Note.—At times, CEMS RA tests are conducted during NSPS performance tests. In these cases, RM results obtained during CEMS RA tests may be used to determine compliance as long as the source and test conditions are consistent with the applicable regulations.

7.2 *Correlation of RM and CEMS Data.* Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration or emission rate for each pollutant RM test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Then, compare each integrated CEMS value against the corresponding average RM value. Use the following guidelines to make these comparisons.

7.2.1 If the RM has an integrated sampling technique, make a direct comparison of the RM results and CEMS integrated average value.

7.2.2 If the RM has a grab sampling technique, first average the results from all grab samples taken during the test run and then compare this average value against the integrated value obtained from the CEMS chart recording during the run.

7.3 *Number of RM Tests.* Conduct a minimum of nine sets of all necessary RM tests. For grab samples, e.g., Method 7, a set is made up of at least three separate measurements. Conduct each set within a period of 30 to 60 minutes.

Note.—The tester may choose to perform more than nine sets of RM tests. If this option is chosen, the tester may, at his descretion, reject a maximum of three sets of the test results so long as the total number of test results used to determine the relative accuracy is greater than or equal to nine, but he must report all data including the rejected data.

7.4 *Reference Methods.* Unless otherwise specified in an applicable subpart of the regulations, Methods 6, 7, 3, and 4, or their approved alternatives, are the reference methods for SO_2, NO_x, diluent (O_2 or CO_2), and moisture, respectively.

7.5 *Calculations.* Summarize the results on a data sheet; an example is shown in Figure 2-2. Calculate the mean of the RM values. Calculate the arithmetic differences between the RM and the CEMS output sets. Then calculate the mean of the difference, standard deviation, confidence coefficient, and CEMS RA, using Equations 2-1, 2-2, 2-3, and 2-4.

8. *Equations*

8.1 *Arithmetic Mean.* Calculate the arithmetic mean of the difference, d, of a data set as follows:

$$\bar{d} = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad \text{(Eq. 2-1)}$$

Where:

n = Number of data points.

$\sum_{i=1}^{n} d_i$ = Algebraic sum of the individual differences, d_i.

When the mean of the differences of pairs of data is calculated, be sure to correct the data for moisture, if applicable.

BILLING CODE 6560-26-M

Run No.	Date and time	SO_2			NO_x[b]			CO_2 or O_2[a]		SO_2[a]			NO_x[a]		
		RM	M	Diff	RM	M	Diff	RM	M	RM	M	Diff	RM	M	Diff
		ppm[c]			ppm[c]			%[d]	%[d]	mass/GCV			mass/GCV		
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
11															
12															
Average															
Confidence Interval															
Accuracy[c]															

[a]For steam generators; [b] Average of three samples; [c] Make sure that RM and M data are on a consistent basis, either wet or dry.

Figure 2-2. Relative accuracy determination.

BILLING CODE 6560-26-C

8.2 *Standard Deviation.* Calculate the standard deviation S_d as follows:

$$S_d = \sqrt{\frac{\sum_{i=1}^{n} d_i^2 - \frac{(\sum_{i=1}^{n} d_i)^2}{n}}{n-1}} \quad \text{(Eq. 2-2)}$$

8.3 *Confidence Coefficient.* Calculate the 2.5 percent error confidence coefficient (one-tailed) CC as follows:

$$CC = t_{0.975}\frac{S_d}{\sqrt{n}} \quad \text{(Eq. 2-3)}$$

Where:

$t_{0.975}$=t-values (see Table 2-1)

Table 2-1. t-VALUES

n[a]	$t_{0.975}$	n[a]	$t_{0.975}$	n[a]	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

[a] The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

8.4 *Relative Accuracy.* Calculate the RA of a set of data as follows:

$$RA = \frac{|\bar{d}| + |CC|}{\overline{RM}} \times 100 \quad \text{(Eq. 2-4)}$$

Where:

$|\bar{d}|$ = Absolute value of the mean of differences (from Equation 2-1).

$|CC|$ = Absolute value of the confidence coefficient (from Equation 2-3).

$\overline{RM}$ = Average RM value or applicable standard.

9. *Reporting*

At a minimum (check with the appropriate regional office, or State or local agency for additional requirements, if any) summarize in tabular form the calibration drift tests and the RA tests. Include all data sheets, calculations, and charts (record of data outputs) that are necessary to substantiate that the performance CEMS met the performance specification.

10. *Bibliography*

10.1 "Experimental Statistics," Department of Commerce, Handbook 91, 1963, pp. 3-31, paragraphs 3-3.1.4.

Performance Specification 3—Specifications and Test Procedures for O_2 and CO_2 Continuous Emission Monitoring Systems in Stationary Sources

1. *Applicability and Principle*

1.1 *Applicability.* This specification is to be used for evaluating the acceptability of O_2 and CO_2 continuous emission monitoring systems (CEMS) after initial installation and whenever specified in an applicable subpart of the regulations. The specification applies to O_2 and CO_2 monitors that are not included under Performance Specification 2.

The definitions, installation measurement location specifications, test procedures, data reduction procedures, reporting requirements, and bibliography are the same as in Performance Specification 2. Sections 2, 3, 5, 6, 8, 9, and 10, and also apply to O_2 and CO_2 CEMS under this specification. The performance and equipment specifications and the relative accuracy (RA) test procedures for O_2 and CO_2 CEMS differ from SO_2 and NO_x CEMS, unless otherwise noted, and are therefore included here.

1.2 *Principle.* Reference method (RM) tests and calibration drift tests are conducted to determine conformance of the CEMS with the specification.

2. *Performance and Equipment Specifications*

2.1 *Instrument Zero and Span.* This specification is the same as Section 4.1 of Performance Specification 2.

2.2 *Calibration Drift.* The CEMS calibration must not drift by more than 0.5 percent O_2 or CO_2 from the reference value of the gas, gas cell, or optical filter.

2.3 *CEMS Relative Accuracy.* The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data or 1.0 percent O_2 or CO_2, whichever is greater.

3. *Relative Accuracy Test Procedure*

3.1 *Sampling Strategy for RM Tests, correlation of RM and CEMS data, Number of RM Tests, and Calculations.* This is the same as Performance Specification 2, Sections 7.1, 7.2, 7.3, and 7.5, respectively.

3.2 *Reference Method.* Unless otherwise specified in an applicable subpart of the regulations, Method 3 of Appendix A or any approved alternative is the reference method for O_2 or CO_2.

(Sec. 114, Clean Air Act, as amended (42 U.S.C. 7414))

[FR Doc. 81-2637 Filed 1-23-81; 8:45 am]
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Federal Register

Monday
January 26, 1981

Part X

Department of Health and Human Services

Office of the Secretary

Public Health Service Human Research Subjects

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 46

Final Regulations Amending Basic HHS Policy for the Protection of Human Research Subjects

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department) is amending the HHS policy for the protection of human research subjects and responding to the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission) and the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (President's Commission) concerning institutional review boards (IRBs).

These amendments substantially reduce the scope of the existing HHS regulatory coverage by exempting broad categories of research which normally present little or no risk of harm to subjects. Specifically, the new regulations: (1) Exempt from coverage most social, economic and educational research in which the only involvement of human subjects will be in one or more of the following categories: (a) The use of survey and interview procedures; (b) the observation of public behavior; or (c) the study of data, documents, records and specimens. (2) Require IRB review and approval of research involving human subjects if it is supported by Department funds and does not qualify for exemption from coverage by these regulations. (3) Require only expedited review for certain categories of proposed research involving no more than minimal risk and for minor changes in research already approved by an IRB. (4) Provide specific procedures for full IRB review and for expedited IRB review. (5) Designate basic elements of informed consent which are necessary as a prerequisite for humans to participate as subjects in research, and additional elements of informed consent which may be added when they are appropriate. (6) Indicate circumstances under which an IRB may approve withholding or altering some or all of the elements of informed consent otherwise required to be presented to research subjects. (7) Establish IRB membership requirements. (8) Establish regulations which, to the extent possible, are congruent with FDA final regulations to be published on informed consent and IRB activities.

The notice of proposed rulemaking (NPRM) which preceded this final regulation was controversial in two respects: (1) It proposed prior IRB review and approval of human subject research activities not directly funded by the Department, but carried out in institutions which receive HHS funding for certain research activities; and (2) it left open the question of coverage of behavioral and social science research involving little or no risk to the human subjects. The Department expects these controversies to be resolved because the NPRM is replaced with final regulations which do not extend the requirements as described in item (1) and provide broad exemptions for behavioral and social science research described in item (2).

EFFECTIVE DATE: These regulations shall become effective on July 27, 1981. Institutions currently conducting or supporting research in accord with General Assurances negotiated with HHS (formerly HEW) may continue to do so in accord with the conditions of their General Assurance. However, these institutions are permitted and encouraged to apply §§ 46.101, 46.102, 46.107, 46.108, 46.109, 46.110, 46.111, 46.112, 46.113, 46.114, 46.115, 46.116, 46.117, 46.118, 46.119, 46.120 and 46.121 as soon as it is feasible to do so. They need not wait for the effective date or the negotiation of a new assurance to begin to function in accord with the sections cited above. The Department will begin to renegotiate General Assurances on the effective date of these regulations.

Institutions conducting or supporting research in accord with a Special Assurance negotiated with the Department, shall continue to do so until such time as the assurance terminates. New Special Assurances will be negotiated in accord with the new regulations whenever feasible.

ADDRESS: Please send comments or requests for additional information to: F. William Dommel, Jr., J.D., Assistant Director, Office for Protection from Research Risks, National Institutes of Health, 5333 Westbard Avenue, Room 3A–18, Bethesda, Maryland 20205. Telephone: (301) 496–7163.

SUPPLEMENTARY INFORMATION: Basic regulations governing the protection of human subjects involved in research, funded by HHS (formerly HEW) were published in the Federal Register on May 30, 1974 (30 FR 18914).

Subsequently, regulations were published to provide additional protections for "special groups" containing individuals who may have diminished capacity to consent or who may be at high risk. The additional regulations pertain to research activities involving fetuses, pregnant women and prisoners. They are found in Subparts B and C of 45 CFR Part 46, and they remain unchanged by the publication of these regulations except for the conforming amendments listed below.

In addition, regulations have been proposed to provide additional safeguards for other who may have diminished capacity. These were published in the Federal Register as follows: Research Involving Children (43 FR 31786, July 21, 1978), and Research Involving Those Institutionalized as Mentally Disabled (43 FR 53950, Nov. 17, 1978). Final regulations on these two categories are still being considered by the Department.

On August 8, 1978, the Food and Drug Administration (FDA) published proposed Standards for Institutional Review Boards for Clinical Investigations (43 FR 35186). Shortly thereafter, the National Commission submitted its report and recommendations on IRBs and informed consent, and that document was published in the Federal Register on November 30, 1978 (43 FR 56174). In its report, the National Commission recommended revisions of the current HHS regulations for IRBs. Because the FDA stated in the August 8, 1979 proposal that its regulations should be compatible with those of the Department. FDA withdrew that proposal and published a new proposal on August 14, 1978 in conjunction with a similar proposal published on the same date by HHS. The Department and FDA stated at that time that they agreed in principle with the recommendation of the National Commission that IRBs should operate under one set of regulations for the protection of human research subjects.

The regulations published below are nearly identical in format and content with those published by FDA in all matters pertaining to membership, functions and responsibilities of IRBs. In all other matters they are consistent with FDA regulations which differ from HHS regulations only with respect to matters covered by statute or required by the mission of FDA. The regulations published below provide a common, flexible framework within which IRBs can operate whether they are reviewing research funded by HHS or regulated by FDA.

Background

The National Research Act (Pub. L. 93-348) was signed into law on July 12, 1974, creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. One of the topics of study identified in the mandate to the National Commission was "Institutional Review Boards." The Commission was required to recommend to the Secretary, HHS, "* * * mechanisms for evaluating and monitoring the performance of Institutional Review Boards in accordance with Section 474 of the Public Health Service Act and appropriate enforcement mechanisms for carrying out their decisions." The National Commission was further required to make recommendations regarding the protection of subjects involved in research not subject to regulation by HHS.

In discharging its duties under this mandate, the National Commission studied the performance of IRBs which are required to review research involving human subjects that is conducted at institutions receiving funds for this research from HHS under the Public Health Service Act. The National Commission found that the review of proposed research by IRBs is the primary mechanism for assuring that the rights of human subjects are protected.

The National Commission undertook a substantial effort to develop information about the performance of IRBs, the research they review, and the strengths and weaknesses of this mechanism. This effort included the support of an extensive survey of IRB members, investigators and research subjects at a sample of 61 institutions including medical schools, hospitals, universities, prisons, institutions for mentally ill and retarded, and research organizations. Also, the background, development, and administration of the present HHS regulations governing IRBs were examined. Three public hearings were held at which federal officials, representatives of IRBs, investigators, and other concerned persons presented their views on IRBs. The National Minority Conference on Human Experimentation, convoked by the National Commission to assure that viewpoints of minorities would be heard, made recommendations to the National Commission that pertained to IRBs. The National Commission also reviewed several papers prepared under contract on such topics as informed consent, evaluation of risks and benefits, issues that arise in particular kinds of research (such as social experimentation or deception research), and the legal aspects of IRB operation. A substantial amount of correspondence on IRBs was received and reviewed by the National Commission.

In addition, a survey was made of the standards and procedures for the protection of human subjects in research conducted or sponsored by federal departments and agencies. Finally, the National Commission conducted public deliberations to develop its recommendations on IRBs.

Pursuant to section 205 of the National Research Act (Pub. L. 93-348), the recommendations of the National Commission regarding Institutional Review Boards were published in the Federal Register (43 FR 56174) on November 30, 1978. Comments were received from approximately 100 individuals, institutions, organizations and groups. After reviewing the recommendations and the comments, the Secretary prepared the notice of proposed rulemaking which was published on August 14, 1979 (44 FR 47688).

Following the publication of the proposed rules, the Department joined FDA in holding joint hearings on them in Washington, D.C., Houston and San Francisco. Transcripts made of these meetings were considered in the preparation of the regulations. The Department received and reviewed approximately 400 sets of comments on its proposed rules. The FDA received and reviewed more than 200 sets of comments on its proposed rules. The Department and FDA then shared all of the information in both sets of comments.

On July 12, 1980 the President's Commission held hearings concerning federal regulation of behavioral and social science research. These hearings also dealt with the question of the applicability of the regulations to human subject research not directly funded by the Department. In a letter dated September 18, 1980, Chairman Abram communicated the views of the President's Commission to the Secretary, HHS.

Department officials participated in workshops, seminars and meetings sponsored by a variety of agencies, institutions and associations concerning the proposed rules. These were held in Chicago, Boston, Cleveland, New Orleans, San Antonio, Traverse City, Louisville, St. Louis and Washington, D.C. Advice was sought from a wide variety of scholars, IRB chairpersons and members, and research investigators.

Since April of 1980 Department officials and representatives from other federal agencies have met once per week to consider all of the material relevant to the protection of human subjects compiled since the beginning of the public process in 1974. The regulations published below were prepared by them, and reviewed and approved by the Secretary.

Conforming Amendments

Subparts E and C of 45 CFR 46 are amended to correct references to specific sections of Subpart A. These changes do not represent any substantive changes to Subparts B or C, but are necessary to conform with section changes in Subpart A.

OMB Clearance

With regard to reporting and recordkeeping requirements contained in these regulations, the Department will seek Office of Management and Budget (OMB) clearance prior to use. If the OMB does not approve the reporting and recordkeeping requirements without change, the regulations will be revised to comply with OMB recommendations.

Major Provisions

The regulations continue the Department's policy of providing protections for the rights and welfare of human subjects involved in research, however, they are applicable only to research involving human subjects which is funded in whole or in part by the Department. They do not extend coverage to other research carried out by federal agencies or by non-federal institutions. By limiting applicability to research funded by HHS, the Department has made a substantial reduction in coverage from that which was proposed in the Notice of Proposed Rulemaking published in the Federal Register on August 14, 1979.

The regulations contain broad exemptions for educational, behavioral and social science research which involves little or no risk to research subjects. These exemptions constitute a major deregulation from rules in force at the present time. They exclude most social science research projects from the jurisdiction of the regulations.

The regulations substantially modify the existing HHS policy or protection of human subjects by reducing significantly the coverage of the policy. This is accomplished through broad exemptions of categories of research which normally present little or no risk of harm to subjects. In taking this step,

the Department anticipates that the work load of IRBs will be significantly reduced, as will the paperwork burden on those scientists whose research will henceforth be exempt. Also, since the IRB will be relieved of unnecessary work, research institutions are expected to have less difficulty in recruiting members of IRBs, and the IRBs will be able to concentrate more productively on projects which most deserve IRB attention.

These regulations, promulgated by HHS, are congruent with regulations to be published simultaneously by the Food and Drug Administration (FDA). The HHS and FDA regulations are nearly identical in both content and format in all matters pertaining to the membership, functions and responsibilities of IRBs. The two sets of regulations differ only where required to do so by statute, or where differences are dictated by the specific regulatory mission of the FDA. The congruence of the two sets of regulations is expected to remove a major source of discontent among affected institutions.

Response to Public Comment

More than 500 public comments were received by individuals and organizations in response to the publication in the Federal Register of (1) the Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research: Institutional Review Boards (43 FR 56174 November 30, 1978), and (2) the Notice of Proposed Regulations Amending Basic HEW (now HHS) Policy for Protection of Human Research Subjects (44 FR 47688 August 14, 1979). Since the final format of the regulations varies significantly from that of the proposed regulations, the summaries of the recommendations of the National Commission report, proposed HHS regulations, public comment, and the Department's responses are organized below by topic rather than by the section and paragrah designation of the regulations. (A summary of pertinent language from the National Research Act is also included in the discussion of exemptions.) Sections and paragraphs referred to are always those of the final regulations. References to research are meant to include only research involving humans as subjects. The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research is referred to as the National Commission. The major issues addressed by the commentators are considered below.

Should the Regulations Apply to HHS-Funded Research Only, or Should They be Extended to Other Research Conducted at or Supported by Institutions Receiving HHS Research Funds?

National Research Act

The Act specifies that the Secretary shall by regulation require that each entity which applies for a grant or contract under the Act for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant or contract assurances satsifactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an Institutional Review Board) to review biomedical and behavioral research involving human subjects conducted at or sponsored by such entity in order to protect the rights of the human subjects of such research (Pub. L. 93-348 Sec. 212).

Recommendation of the National Commission

The Secretary, HHS, should require by regulation that an IRB have authority to review and approve, require modification in, or disapprove all research involving human subjects conducted at the institution (43 FR 56178).

HHS Proposed Regulations: Except for categories of research specifically exempt, prior and continuing review and approval by an IRB would have been required for the conduct of all research involving human subjects not funded by HHS and conducted at or supported by any institution receiving funds from HHS for the conduct of research involving human subjects (44 FR 47698).

Public Comment: Among the more than 500 commentators, not quite 100 wrote on this issue directly, and of those commenting, a majority felt that it would be inappropriate for HHS to extend federal requirements for prior IRB review and approval to research conducted without federal funds. Objections were voiced that the regulations should be aimed at, and indeed seemed to be primarily formulated for, biomedical research. These commentators argued that if the regulations were binding on social science research (see full discussion of social science research in exemptions below), the extension of the regulations to social science research not funded by HHS was all the more onerous. A number felt that if non-HHS-funded research were to be covered by the regulations, such coverage should only extend to categories of research in which there had been abuses of human subjects in the past. It was argued by some that HHS had no authority to extend its regulations to non-HHS-funded research, much less a clear mandate to do so. This extension, some commentators argued, would be an unwarranted intrusion on academic freedom and some felt it would violate the First Amendment to the United States Constitution by requiring prior review, thus constituting prior restraint. Among those who expressed opposition to the extension were a number of commentators who suggested that HHS encourage each institution receiving Department funds to develop its own mechanism for protecting human subjects of research not supported by HHS funds, but not require that this mechanism be the same as that required by the regulation. Several federal agencies noted that an extension of the regulations to non-HHS-funded research might conflict with their agencies' missions, if these missions were being carried out with the assistance of institutions which are receiving HHS research funds.

The Commentators: Expressing support for the extension of the HHS regulations to research not funded by the Department were in the minority. These commentators argued that IRB review procedures and criteria for approval should be consistent for all research, regardless of source of funding. Some felt, as did the National Commission, that the proposed regulations should extend compliance requirements to all research conducted at or sponsored by institutions receiving any federal funds for health research. Further, it was argued that HHS should not just require IRB review and approval of nonfederally-funded research, but that all of the provisions of the regulations should be applicable.

HHS Response: Prior to the passage of the National Research Act, HHS required by regulation (45 CFR 46) appropriate IRB review of HHS-funded research only, although many institutions conducted IRB review without regard to source of funding. Informally, HHS interpreted the Act as requiring that all research involving human subjects be reviewed by an IRB if the research was to be conducted at or sponsored by an institution applying for funding from the Public Health Service (PHS) for research of this kind. However, while awaiting the recommendations regarding IRBs by the National Commission, the requirement was implemented only at institutions where a significant portion of the human

subjects' research was supported by the Department. Institutions which conducted only a small amount of HHS-funded research were not required to conduct IRB review of non-HHS-funded research, although they were encouraged to do so. Under the proposed HHS regulations, all nonexempt research involving human subjects, regardless of the source of funding for the research, would have to have been reviewed and approved by an IRB if the research were to be conducted at or supported by an institution receiving HHS funding for this kind of research.

HHS has carefully considered its proposed policy regarding the regulation of non HHS-funded research in light of the comments received and the statutory basis for the more expansive interpretation. The public comment, including that of the President's Commission, revealed a broad based and significant amount of objection to the extension. Further, the HHS General Counsel has advised that there is no clear statutory mandate in the National Research Act to support a requirement for IRB review of other than Public Health Service-funded research. Therefore, the Secretary of HHS, after considering a number of possible options, has decided not to extend the requirements for prior IRB review and approval to non HHS-funded research.

However, since the function of these regulations is the protection of the rights and welfare of human subjects, it is of crucial importance that institutions seeking HHS funds for research demonstrate their willingness to afford human research subject protections regardless of the source of funding. The Department feels strongly that public funds for research involving human subjects, should not be awarded to institutions which are unwilling to demonstrate their dedication to this principle. The IRB mechanism is a method which has proven to be successful in achieving the protections which HHS recognizes as essential, and the Department urges institutions to continue to employ this and other appropriate methods of insuring that human research subject protections are provided for those participating in research not funded by HHS.

HHS Decision: The regulations are to be applicable only to research conducted or funded by HHS (see § 46.101(a)). However, recipients of funds for research covered by these regulations must provide "A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of source of funding." IRE review, or some other effective mechanism for protection of human subjects, is strongly recommended for non HHS-funded research (see § 46.103(b)(1)).

What HHS-Funded Research Should be Covered by These Regulations and What Research Should be Exempt?

Research Covered by these Regulations

Recommendations of the National Commission:

The Secretary should promulgate regulations governing ethical review of all research involving human subjects that is subject to federal regulation. Furthermore, all research involving human subjects sponsored or conducted by an institution that receives funds from any federal department or agency to conduct health related research shall be reviewed by and conducted in accordance with the determinations of an IRB established and operated in accordance with the regulations. (43 FR 56176)

HHS Proposed Regulations

A significant proportion of the recommendations of the National Commission are essentially implemented, but certain research is specifically exempted. Final authority to determine whether a particular activity is exempt from these regulations rests with the Secretary and thus the Secretary may override an institution's decision, for example, that an activity is exempt. In addition, the Secretary may require that specific research or nonresearch activities or classes of research or nonresearch activities conducted or funded by the Department, but not otherwise covered by these regulations, comply with these regulations, and may also exempt specific activities or classes of activities, otherwise covered by these regulations, from some or all of these regulations. Also, compliance with these regulations in no way renders inapplicable pertinent state or local laws or regulations or other federal laws or regulations. (44 FR 47692–47693)

Public Comment: Fewer than thirty public comments addressed the sections of the HHS proposed regulations summarized above. A few among them were of the opinion that HHS should limit regulations to specific areas of documented abuses rather than promulgate regulations of a broad scope. Other commentators addressed various aspects of the Secretary's authority to regulate research activities. A few commentators argued for incorporating within the regulations provisions for procedural review of the Secretary's determination whether a particular activity is exempt. Several commentators objected to the provision that the Secretary may require that specific research or nonresearch activities or classes of such activities comply with the proposed regulations, without opportunity for adequate public comment and open deliberation. While no commentators questioned the authority of the Secretary to exempt specific activities or classes of activities, several emphasized the need for the opportunity for public comment should the Secretary exercise this authority. One commentator objected to a confusion in the section relating to the Secretary's authority to determine whether an activity is exempt, on the grounds that the section implied that the Secretary's authority to exempt particular activities extended also to non HHS-funded research.

HHS Response: The HHS proposed regulations closely parallel the recommendations of the National Commission and were issued in fulfilling the mandate of the National Research Act (Public Law 93–348). In developing the HHS proposed regulations care was taken to provide protection for human subjects involved in those activities that present risk to subjects, while exempting from coverage by the regulations many forms of research that do not involve risks or involve only slight or remote risks. Since the purpose of the regulations is to protect the rights and welfare of human research subjects. Limitation to those specific kinds of abuses and unethical practices that have been documented in the past could not assure reasonable protections against other foreseeable harms. The Department believes that effective protection for the rights and welfare of subjects, requires preventive safeguards wherever additional risks associated with the research activities can be reasonably foreseen. In response to those arguing for provision for procedural review of decisions by the Secretary, the Department has in place procedures through which an institution may submit supplementary arguments in opposition to a position taken by the Secretary. However, final authority for determining whether a specific research activity is exempt or not must remain with the Secretary. Similarly the Secretary has authority to require that specific research activities or classes of activities comply with these regulations. However, HHS agrees with the concerns raised by public comment and has

removed the reference to "nonresearch activities" from the final regulations. Decisions of the Secretary regarding the exemption of specific research activities or classes of research activities will be published in the Federal Register with opportunity for public comment and careful consideration of substantive issues that are raised. HHS regrets that a typographical error in the paragraph concerning the Secretary's authority to determine whether a particular activity is exempt resulted in the confusion about non HHS-funded research.

HHS Decision: The regulations are applicable to all non-exempt research involving human subjects conducted or funded by HHS. This includes research conducted by Department employees. In negotiating interagency agreements, HHS will determine on a case by case basis whether the regulations shall apply. It also includes research conducted or funded by HHS outside the United States, except that in appropriate circumstances, the Secretary may waive some or all of the requirements of these regulations. The Secretary has final authority to determine whether a particular activity is covered by these regulations and, in regard to specific research activities or classes of research activities, may require compliance with these regulations, or may exempt such activities from coverage. Also, no individual may receive HHS funding for research covered by these regulations unless the individual is affiliated with or sponsored by an institution which assumes responsibility for the research under an assurance agreement with the Department. Lastly, compliance with these regulations will in no way render inapplicable pertinent Federal, State or local laws or regulations. (See § 46.101.)

Research Exempt From These Regulations

Recommendations of the National Commission:

The National Commission confined its discussion of exemptions to the issue of informed consent and recommended that, under certain circumstances, informed consent could be waived (43 FR 56179). Waiver by an IRB of informed consent is discussed in detail below. Types of research mentioned in the National Commission's recommendations form the basis for the HHS proposed exemptions.

HHS Proposed Regulations: The HHS proposed regulations do not address whether or not research which is exempt from these regulations should contain provisions for obtaining informed consent.

The Department has proposed to include a list of exempted categories of research in the final regulations. Two lists were published in the proposed regulations for public comment. (44 FR 47692–47693)

In addition, the Department requested comment on a proposed requirement that an investigator who intends to conduct research involving human subjects which that investigator judges to be exempt must file a justification for exemption, citing the underlying reasons for claiming exemption.

Public Comment: Nearly 300 commentators specifically addressed the issue of exemptions. The overwhelming majority of those commenting supported the concept of exempting from coverage by these regulations certain no-risk, or very low risk, research. Most commentators believe that the adoption of exemptions will clarify coverage questions, significantly reduce the work load of IRBs, and thus allows IRBs to concentrate on the review of research which involves a greater degree of risk to subjects. Only a few commentators opposed the concept of exemptions. The primary reason given was that an IRB ought to review and rule on the adequacy of protections of subjects in all research conducted or sponsored by the institution. A number of commentators favored exemptions but criticized the approach adopted by HHS in formulating exemptions. One group contended that the HHS failure to exempt all forms of social science research constitutes prior restraint of freedom of inquiry in violation of the First Amendment of the Constitution. Several commentators opposed specific lists of exemptions in favor of language in the regulations that would exempt all research utilizing legally competent subjects if that research involved neither deceit nor intrusion upon the subject's person, nor the denial or withholding of accustomed or necessary resources.

HHS Response: The Department has found that public comment supports the concept of exemptions as a means to reduce the burdens upon the institutions and the IRBs without impairing protections for human subjects.

By exempting a number of types of low or no risk research from coverage under these regulations, and by defining more clearly "human subject" the largest portion of social science research will not be subject to IRB review and approval either because it does not involve human subjects or because it does not present risks to subjects. Moreover, despite some general comments that the regulations would impede social research, the Department has been presented no evidence that social science research that may present risks to subjects has been unduly hampered by the requirement for IRB review and approval. HHS concludes that continued coverage by the regulations of that social science research which poses risks to subjects is justified.

Although HHS found considerable merit to the suggestion that the regulations should define what is covered rather than list specific exemptions if research were exempted from coverage unless it met the criteria proposed by the commentators, there might be other categories of research involving significant risk that would be inadvertently exempted from coverage. Nonetheless, HHS recognizes that it may have unintentionally included within its coverage description types of research which should be exempted and for this reasons § 46.101(e) of the final regulations provides for a waiver which can be used to remedy such situations.

HHS Decision: HHS will exempt certain categories of no-risk or very low risk research involving human subjects. The specific exemptions are discussed in detail below.

Exempted Categories of Research

Of the commentators who addressed the two alternative lists of exempted categories of research, five times as many commentators preferred Alternative A to Alternative B. With the public response in mind, HHS chose Alternative A as the basis upon which to develop a list of exempted categories of research for the final regulations. Therefore, the discussions below include public comment that either addressed Alternative A directly or while addressing Alternative B made suggestions and raised issues that were applicable to Alternative A.

Exemption for Certain Large Scale Evaluation Studies

Public Comment: Nearly all commentators took issue with the terms "on a large scale." The main objection centered on the lack of clarity concerning the intent of the above terms and the coverage of the exemption. Most commentators felt the exemption was vague and suggested a variety of changes.

HHS Response: HHS agrees with public comment and new language in the final regulations is designed to clarify the intent of the Department. Additionally, for the reasons listed in the discussion of informed consent below, this exemption is deleted and provisions for waiver of informed consent are added.

HHS Decision: The exemption is deleted and additional provisions for waiver of informed consent are added. (See § 46.116(c).)

Exemption for Educational Practices

Public Comment: The limited public comment received concerning this exemption was generally favorable but suggested minor changes in wording or requested that certain terminology be defined.

HHS Response: The Department considered the commentators' suggestions and added the word "methods" after "classroom management."

HHS Decision: The following category of research involving human subjects is exempt from coverage under these regulations:

Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

Exemption for Research Involving Educational Tests

Public Comment: Fewer than ten commentators specifically addressed this proposed exemption. Some suggested the inclusion of cognitive tests among the types of educational tests. Other commentators questioned whether it was necessary to stipulate that in order to qualify for exemption information must be recorded so that subjects could not be identified. A few felt that additional language should be inserted allowing longitudinal or follow-up studies which require the contact of research subjects.

HHS Response: HHS agrees with the addition of cognitive tests to this exemption and has so worded the final regulation. Also, the word "standard" has been removed in the final regulations to avoid the restriction of the exemption to only standarized tests. "Reasonably" likewise is removed from the final regulations because interpretation of the word is subject to a variety of opinions. HHS disagrees with public comment suggesting removal or alteration of language concerning the identification of subjects because this exemption is designed to permit no-risk or low risk research without requiring all the protections of the regulations. However, the risk is increased when identifiers are introduced and, consequently, the basis for exemption of such research is removed.

HHS Decision: The following category of research involving human subjects is exempt from coverage under these regulations:

Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), if information taken from these sources is recorded in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

Exemptions for Survey and Observation Research

Public Comment: Nearly forty commentators addressed the proposed exemption for research involving surveys and observation research. Most of those commenting favored the concept of exempting from the regulations innocuous survey and observation research. However, several commentators suggested a variety of changes be made to the proposed language. One frequently addressed topic was that the exemption for survey research left out interview research. Some commentators requested that HHS change the term "results" to "response" since the first term can refer to the findings of a study and not necessarily to the response of, or interaction with, human subjects. The phrase "sensitive topics" drew significant attention. Most of those commenting felt that it would be difficult if not impossible to expect a uniform or consistent interpretation of this phrase. Many of these commentators suggested that HHS define the phrase or reword the final regulations to include better understood examples. Many commentators felt that the observation of public behavior should be exempt, some commentators qualifying this suggestion to mean that observation research should be exempt so long as it did not involve deception. A number also contended that informed consent may not be needed for observational research. A few commentators addressed topics of public officials and publicly available data within the context of observational studies.

HHS Response: HHS believes that much of the research involving survey and observation techniques entails no risk or very low risk. There is no evidence of adverse consequences from research of this kind carried out in the past, and very little evidence of any risk other than possible breach of confidentiality. For the most part, public comments agreed with this position. HHS endorses the public comment suggesting the inclusion of interviews in the proposed survey research exemption. HHS agrees with comment suggesting the term "response" and has changed the final regulations accordingly. On the issue of "sensitive topics", the Department has included in the final regulations a description of harms that a subject may incur if responses become known outside the research context. The new language should clarify the intent of HHS to protect human subjects from harms resulting from some kinds of survey and observation research. The proposed exemption for observation research is expanded in the final regulations to include language similar to that in the survey research exemption concerning the issue of identifiable responses when those responses, if they became known outside the research, could be harmful to the subjects. The Department notes that in truly public settings research involving the observation of public behavior is not even defined as research involving human subjects.

The Department disagrees with public comment suggesting that informed consent may not be necessary in observation research. The question of whether informed consent is to be sought is to be judged independently from the requirement for IRB review and approval. Exemptions from coverage under the regulations in no way changes any requirements of other federal, state and local laws or regulations on informed consent. Moreover, many professional ethical codes contain a requirement for informed consent.

HHS Decision: The following categories of research involving human subjects are exempt from coverage under these regulations:

Research involving survey or interview procedures, except where all of the following conditions exist: (i) responses are recorded in such a manner that the human subjects can be identified, directly or through identifiers linked to the subjects, (ii) the subject's responses, if they became known outside the research could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability, and (iii) the research deals with sensitive aspects of the subject's own behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol. All research involving survey or interview procedures is exempt, without exception, when the respondents are elected or appointed public officials or candidates for public office.

Research involving the observation (including observation by participants) of public behavior, except where all of the following conditions exist: (i) Observations are recorded in such a manner that the human subjects can be

identified, directly or through identifiers linked to the subjects, (ii) the observations recorded about the individual, if they became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability, and (iii) the research deals with sensitive aspects of the subject's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

Exemption for Collection or Study of Existing Data

Public Comment: Fewer than twenty commentators addressed this proposed exemption. The majority of those who commented favored the proposed exemption. Those who criticized the exemption were concerned with the preservation of confidentiality regarding data, documents, records, and specimens. Some commentators wanted clarification that the exemption was intended to apply only to information that has already been collected in connection with some purpose other than that intended by the proposed research activity. A few commentators suggested that expedited review (discussed below) may be desirable since this exemption might conflict with other laws.

HHS Response: In response to public comment, HHS has included clarifying language in the final regulations. First, HHS agrees with public comment that this exemption applies only to existing information, that is, information previously collected for some other purpose. Second, language has been added to clarify the fact that information taken from public sources is also included in the exemption. HHS is concerned about preservation of the confidentiality of data pertaining to human subjects but feels that other federal, state, and local laws or regulations are sufficient to protect the privacy of individuals and the confidentiality of records in cases where the research uses only existing information. It remains the responsibility of the investigator as well as the institution to ensure that such laws and regulations are observed and that the rights of subjects are protected.

HHS Decision: The following category of research involving human subjects is exempt from coverage under these regulations:

Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

Requirement for Filing Justification for Exemption

Public Comment: Nearly forty commentators responded to the Department's request for comment on this proposed requirement. The number of commentators favoring the requirement was equal to the number opposing. Those in favor argued that it would further protect human subjects. Those opposed pointed out that the requirement, while not necessarily adding to the protection of human subjects, could, in effect, undermine the concept of exempt categories of research by requiring the IRBs to carry out the equivalent of expedited review. Others pointed out that research to be funded by the Department would be reviewed for other purposes during the course of which independent judgment on the appropriateness of a claimed exemption would be obtained. Still others felt that the requirement for filing a justification connoted a lack of trust in investigators that is not warranted.

HHS Response: HHS agrees with the arguments presented by those commentators opposing the proposed requirement for filing justification and has not included it in the final regulations.

HHS Decision: The final regulations will not require that an investigator file a separate justification for exemption, although the appropriateness of a claimed exemption will be evaluated in the case of HHS-funded research on the basis of information contained in the research application. Institutions remain free to adopt any administrative procedures relative to exempt categories of research, if they deem them appropriate.

What Are the Definitions of the Key Terms Used in the Regulations?

The following terms were not the subject of significant public comment and are published in the final regulations essentially as proposed: "Secretary," "Department" or "HHS," "institution," and "legally authorized representative" (see § 46.102).

The following terms received considerable public comment and are discussed in detail below: "research," "human subject," "minimal risk," "certification."

Recommendations of the National Commission

The National Commission defined: "research" as a formal investigation designed to develop or contribute to generalizable knowledge; "human subject" as a person about whom an investigator (professional or student) conducting scientific research obtains (a) data through intervention or interaction with the person, or (b) identifiable private information; and "minimal risk" as that risk of harm or discomfort that is normally encountered in the daily lives, or in the routine medical or psychological examination, of normal persons. (43 FR 56175)

HHS Proposed Regulations

The definitions specified in the recommendations of the National Commission are implemented as follows:

"Research" means a formal investigation designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute "research" for purposes of this part, whether or not they are supported or conducted under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

"Human subject" means an individual about whom an investigator (whether professional or student) conducting research obtains (a) data through intervention or interaction with the person, or (b) identifiable information.

"Minimal risk" is the probability and magnitude of harm that is normally encountered in the daily lives of healthy individuals, or in the routine medical, dental or psychological examination of healthy individuals. (44 FR 47695)

Public Comment: Twenty-one commentators addressed the definition of "research." While a few commentators favored the proposed definition because it offered flexibility to the IRB, a majority of the twenty-one opposed or raised questions about the definition. Several commentators felt that the definition is too broad and should be restricted to biomedical research. These commentators felt that the definition should not encompass subjects not at risk, social science research, or historical research; and some preferred voluntary application of the regulations to behavioral research. In contrast, a few commentators suggested that the definition should encompass research which is so specific as not to yield generalizable results. One commentator argued that the definition violated the First Amendment or at least academic freedom in the area of biographic research. A few commentators suggested that HHS substitute "systematic" for "formal" in

the definition, in order to include pilot studies of otherwise covered research.

The HHS proposed definition of "human subject" generated less than twenty comments. A minority of those addressing the topic felt that the definition was a much-needed clarification and a definite improvement over current regulations (45 CFR Part 46). However, several commentators argued that the definition was too broad and included human subjects which should not be covered by the regulations. These commentators objected to the inclusion of historical, journalistic, behavioral, social science and biographical fields of research in the definition. In order to clarify the Department's intent to provide a definition in accord with that of the National Commission, additional language from the National Commission's report is included in the regulation. This language makes clear the meaning of "intervention," "interaction" and "identifiable private information." Further, it makes clear that the regulations are applicable only to research involving "living" individuals.

Of the eleven comments addressing the definition of "minimal risk," a few endorsed the definition as an improvement over current regulations (45 CFR Part 46) and felt that it is sufficiently precise for the purpose intended. Some commentators suggested that the proposed definition is too vague and perhaps subject to multiple interpretations on the part of IRBs. Other commentators stated that IRBs would need HHS assistance in interpreting the definition. Others pointed out that the proposed definition should not compare the risks of harm to subjects to the risks encountered in the daily lives of "healthy individuals," and suggested that the definition should be specific to the subject population.

The definition of "certification" was excluded inadvertently in the HHS proposed regulations (44 FR 47695). Public comment pointed out that if certification is to be required, it should be defined.

HHS Response: The HHS definitions of "research," "human subject" and "minimal risk" are discussed below in light of the public comment. The definition of "certification" is published in the final regulations essentially as stated in current regulations (45 CFR Part 46).

The HHS proposed definition of "research" follows closely the recommendations of the National Commission. HHS believes that public concerns that the definitions are too broad will in most cases be met by the exemptions from the regulations (see § 46.101(b)). The National Commission, although not identifying specific fields of research, clearly intended to include behavioral studies in the recommended definition of "research." HHS agrees with this conclusion and does not believe that the definition of "research" violates the rights of investigators given that the regulations exempt research which offers little or no risk to the rights and welfare of human research subjects. HHS restricts the definition to "generalizable knowledge" because the Department does not intend to include activities such as innovative therapy under the regulations.

HHS agrees with the suggestion that the inclusion of pilot studies within the definition of research should be clarified, and has substituted "systematic" for the word "formal" in the definition.

HHS response to the argument that the definition of "human subject" is too encompassing is similar to that stated above. Many activities and projects will not be reviewed by an IRB because they are in the list of exempted categories of research provided at § 46.101(b). Since public comment indicated that the HHS proposed regulations do not clarify whether the regulations apply only to living individuals. HHS clarifies its intention in the final regulations by including the word "living" within the definition of "human subject." In addition, the National Commission specifically recommended that the definition of "human subject" address identifiable "private" information. HHS has reinserted the term "private" to modify "information." This modification is intended to make it clear that the regulations are only applicable to research which involves intervention or interaction with an individual, or identifiable private information. Examples of what the Department means by "private information" are: (1) Information about behavior that occurs in a context in which an individual can resonably expect that no observation or recording is taking place, and (2) information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public. In order to constitute research involving human subjects, private information must be individually identifiable. It is expected that this definition exempts from the regulations nearly all library-based political, literary and historical research, as well as purely observational research in most public contexts, such as behavior on the streets or in crowds.

The HHS definition of "minimal risk" essentially parallels the National Commission's recommended definition. Where the National Commission speaks of "normal persons," HHS in the proposed regulations used the terminology "healthy individuals." In light of the public comments on this, however, HHS has reworded the final regulation to reflect its intention that the risks of harm ordinarily encountered in daily life means those risks encountered in the daily lives of the subjects of the research.

HHS agrees with public comment that "certification" should be defined in the regulations. Therefore, the final regulations contain this definition.

HHS Decision: The final definitions of the terms discussed above are:

(1) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge;

(2) "Human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains (a) data through intervention or interaction with the individual, or (b) identifiable private information. "Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects;

(3) "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests; and

(4) "Certification" means the official notification by the institution to the Department in accordance with the requirements of this part that a project or activity involving human subjects has been reviewed and approved by the IRB

in accordance with the approved assurance on file at HHS. (See § 46.102.)

What Should be the Required Elements of the Assurance Agreement Between HHS and the Institution?

Recommendation of the National Commission

Institutions should be required to submit assurances satisfactory to the Secretary and containing information such as the following to enable accreditation determinations to be made: (1) The names and qualifications of members of the IRB and the process by which members are selected; (2) The resources (for example, meeting rooms, staff, office facilities) that will be devoted to the review function; (3) The general operating procedures of the IRB, and the number and types of proposals that are expeced to be reviewed by it; (4) Procedures to assure that all research involving human subjects conducted by or at the institution will be reviewed by an IRB and, if approved, will be conducted in accordance with any restrictions or conditions imposed by the IRB; (5) Review and monitoring procedures and provisions for recordkeeping. (43 FR 56177)

HHS Proposed Regulations

The recommendations of the National Commission are essentially implemented by the proposed regulations which establish the minimum requirements for institutional assurances regarding IRBs. Additionally, the assurance shall be executed by an authorized individual on behalf of the institution. The HHS proposed regulations describe in broad terms the types of assurances as well as specify the minimum requirements in detail for both General Assurances and Special Assurances. Also, the Secretary will evaluate each assurance, taking into consideration the adequacy of the IRB in light of the institution's scope of activities, types of subjects, initial and continuing review procedures and other factors. The Secretary may approve or disapprove an assurance or negotiate an approvable one. (44 FR 47693–47694)

Public Comment: Approximately 100 commentators addressed the sections of the proposed regulations regarding assurances. More than two-thirds of the comments are discussed in other sections of the preamble since the final regulations represent a major reorganization of the section concerning assurances. Some commentators felt the statement in the proposed regulation that the research is to be conducted in accordance with the IRB's determinations subtly implies that the IRB be responsible for enforcing its determinations. According to these commentators, this would involve an IRB in surveillance and not with ethics and risks. A few commentators favored the requirements for General and Special Assurances as proposed. Some felt that the requirements were unnecessarily detailed and that procedural requirements should be the responsibility of the institution. Several commentators argued that provision of meeting space and sufficient staff to support the IRB were not appropriate elements to be included in the regulations and should be deleted. A few commentators suggested that HHS should provide written procedures for the IRB to follow in reporting unanticipated problems involving risks to subjects. While some commentators thought the part of the proposed regulations dealing with the Secretary's evaluation and disposition of assurances was very reasonable, others argued that the standard for evaluation was loose and could contribute to the imposition of harsher requirements on some institutions. Still others questioned if this standard meant that HHS is empowered to assist an institution to develop procedures in order to comply with the regulations. The establishment of an appeals process was raised by several commentators, who felt that an appeal mechanism allowing an investigator recourse to an IRB disapproval of research was an important but missing item in the issue of assurances.

HHS Response: The final regulations contain one section describing assurances. This section sets forth the minimum requirements for an assurance. Various sections of the HHS proposed regulations concerning assurances that more appropriately dealt with recordkeeping, general applicability or IRB review are moved to those respective sections in the final regulations. This reorganization is consistent with some public comment and makes the HHS regulations consistent with those of the FDA.

Concerning public comment that HHS language implies that the IRB be responsible for enforcing its determinations, the final regulations clarify that the institution is responsible for providing assurance that it will comply with the regulations. All references implying that the IRB enforce its determinations are removed. Concerns about the unnecessary detail in the minimum requirement for General and Special Assurances sections should be alleviated by the more streamlined section on assurances in the final regulations. Arguments for deleting the requirements for meeting space and sufficient staff for the IRB are not persuasive. The National Commission specifically cited resources such as meeting space and sufficient staff as elements that an institution should include in its assurance to the Secretary. In agreeing with the National Commission, HHS notes that current regulations (45 CFR Part 46) specify that appropriate administrative assistance and support shall be provided for the IRB's functions and that the amended regulations clarify what is already required.

HHS disagrees with the public comments asking for HHS to provide written procedures for IRBs to follow in reporting unanticipated problems. Currently, institutions exercise this responsibility and HHS feels this authority should remain within the institution. Public comments also questioned the process by which the Secretary or appropriate HHS officials would evaluate each assurance. HHS proposed language is very similar to that of the current regulations (45 CFR 46) and no significant problems have been encountered. Additionally, HHS has included in the assurance section, specific wording regarding the protection of human research subjects, regardless of source of funding. This issue is thoroughly addressed above in the discussion of non-HHS-funded research. The National Commission did not recommend a mechanism for appeal from IRB determinations, since it felt that the IRB is the final authority at the institution regarding the ethical acceptability of proposed research involving human subjects. HHS does not rule out the possibility of an institution establishing an appeals process in order to provide a second review of research activities that were disapproved by an IRB. However, under such circumstances, the appellate body established must meet all of the requirements of the regulations, including those specifying membership requirements. The HHS language has also been clarified to allow for the possibility that an institution need not establish its own IRB, but arrange in its assurance to use an IRB established by another institution.

HHS Decision: An assurance agreement shall:

(1) Be provided by each institution engaged in research covered by the regulations and shall demonstrate to the satisfaction of the Secretary, that the institution will comply with the regulations;

(2) Provide that research covered by these regulations will be reviewed,

approved, and subject to continuing review by an IRB;

(3) Contain a statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of subjects;

(4) Designate one or more IRBs for which provisions are made for meeting space and sufficient staff to support the IRBs' functions;

(5) Provide a list of IRB members identified by the requirements contained in § 46.103(b)(3); and

(6) Contain written procedures which the IRB will follow conduct initial and continuing review of research, to determine which projects require more frequent review, to insure prompt reporting to the IRB of proposed changes in a research activity, and to insure prompt reporting to the IRB and to the Secretary of unanticipated problems. (See § 46.103.)

What Should Be the IRB Membership Requirements?

Recommendations of the National Commission

The Secretary should by regulation require that an IRB have at least five competent and experienced members of diverse backgrounds and professions, including at least one member who is not otherwise affiliated with the institution, in order for the IRB to carry out its responsibilities and be accorded respect for its determinations. The expertise of the IRB should be supplemented, when necessary, by the use of consultants. If an IRB regularly reviews research that has an impact on vulnerable subjects, the IRB should include persons who are primarily concerned with the welfare of those subjects (43 FR 56178).

HHS Proposed Regulations

The membership specifications of the National Commission are implemented. Additionally, no IRB may consist entirely of men or entirely of women and no IRB member may participate in the review of any project in which that member has a conflicting interest (44 FR 47695).

Public Comment: Of the twenty-two comments specifically addressing the issue of IRB membership, a majority argued for changes in the requirements.

Several commentators expressed concern about achieving the absolute requirement for diversity in members' racial and cultural backgrounds and thus the ability of the IRB to determine the acceptability of research proposals in light of community attitudes. A number of commentators argued that in certain locales severe recruitment problems exist. The commentators who opposed the requirement for a member who is not affiliated with, or part of the immediate family of a person who is affiliated with the institution, felt that the requirement demonstrated a lack of confidence in the IRB's ability to be objective and posed additional recruitment difficulties. Several commentators objected to the restriction from participation on the IRB of a member who has a conflicting interest in the research project. A few of these commentators felt that the regulations did not take into account the ability of the IRB to act ethically and objectively and to judge when a conflict of interest is present. Others argued that individual members should be responsible to report a conflict to the IRB. Some commentators felt that the restriction of a member from participation, when an investigator was involved in the selection of that member for the IRB, might mean that the chairperson or senior members of the IRB could seldom review research since their selection may have involved many senior investigators. The inclusion on the IRB of members who represent vulnerable categories of subjects was challenged by only a few commentators, who felt that the decision to include members who are primarily concerned with the welfare of these subjects should be left up to the IRB. Some commentators felt that an IRB reviewing drug studies should have at least one physician member.

HHS Response. The IRB membership requirements published in the proposed regulations are very similar to corresponding requirements in current regulations (45 CFR Part 46) and closely parallel the recommendations of the National Commission. Specifically, the proposed HHS requirement that IRB membership reflect sufficient diversity of racial and cultural backgrounds; professional competence; and the ability to review proposals in terms of applicable law, standards of conduct and community attitudes does not represent a change in Department policy, nor does it diverge from the recommendations of the National Commission. A diverse membership is important and should enhance the IRB's credibility as well as insure a sensitivity to the concerns of both investigators and human research subjects. However, because of varying circumstances, such as geographic location, there is the need for flexibility, so that the institution has the ability to recruit competent IRB members. Public comment indicates that this flexibility, though intended, was not reflected clearly in the proposed regulations. Therefore, HHS has worded the final regulations to clarify this intention. The proposed HHS requirement that the IRB include a person who is not affiliated with the institution is not a new requirement. It, too, is consistent with both the current regulations (45 CFR Part 46) and the recommendations of the National Commission. The National Commission specifically recommended that a member of the immediate family of a person who is affiliated with the institution should not be appointed to serve as the "unaffiliated" member. HHS feels that the inclusion of a person who has no other relationship with the institution other than membership on the IRB serves to maintain the integrity of the IRB and to promote respect for its advice and counsel. The restriction of a member from participating in the review of research in which that member has a conflicting interest is again similar to the restriction in the current regulations (45 CFR Part 46). Very little controversy has been generated over the years concerning this restriction. HHS does concur, however, with the public comment addressing the additional restriction of an IRB member when the review of research involves an investigator who participated in the member's selection for the IRB. The final regulations eliminate this specific restriction in favor of more general and flexible language. In regard to the comment suggesting that a physician member be required for review of drug studies, HHS agrees that this is a reasonable interpretation of the general requirement for professional competance on the IRB.

HHS Decision: An IRB: (1) Shall consist of at least five members of sufficiently diverse backgrounds, including consideration of racial and cultural backgrounds of members and sensitivity to issues such as community attitudes; (2) shall include persons who are able to ascertain the acceptability of research applications in terms of institutional commitments, applicable law and professional standards; (3) shall include members of both sexes; (4) shall include at least one member whose primary concerns are in nonscientific areas; (5) shall consist of members representing more than one profession; (6) shall include a member who is not affiliated or related to a person who is affiliated with the institution; (7) shall include persons who are primarily concerned with the welfare of vulnerable subjects, if the IRB regularly reviews research that involves vulnerable subjects; (8) may invite individuals with competence in special

areas to assist in the review of complex issues; and (9) may not have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB. The regulations authorize each IRB to use consultants to assist in review of complex issues which require expertise not available on the IRB. (See § 46.107.)

What Should Be the General Functions and Operations of an IRB?

Recommendation of the National Commission

Except for research that qualifies for expedited review, all research must be reviewed at a convened meeting of the IRB in which a majority of the members are present. Of those in attendance, approval by a majority is required for research to be approved. The membership should be diverse and include members with nonscientific interests. The IRB should be responsible for conducting continuing review and reporting any serious or continuing noncompliance to institutional officials and the Secretary. (43 FR 46178, 56182)

HHS Proposed Regulations

The requirements recommended by the National Commission are essentially implemented. In addition, at least one member whose primary concerns are in nonscientific areas shall be present at all convened meetings where research is reviewed. The IRB shall follow written procedures: (1) For conducting its initial and continuing review of research; (2) For reporting their decision to the investigator and the institution; (3) for determining which projects require review more often than annually and which projects require verification from sources other than the principal investigator that no material change has occurred; (4) for receiving reports of changes or problems in the research; and (5) for insuring that such problems are promptly reported to the Department. (44 FR 47694–47695)

Public Comment: Approximately forty commentators wrote concerning IRB functions and operations and a majority of them expressed opposition to one or more of the requirements. A few commentators objected to the IRB determining which projects require verification, from sources other than the investigator, that no material change had occurred in some protocols since last review. They thought that this implied a lack of trust in the investigator. On another issue, some commentators felt that only major problems should be reported to the Department, allowing the institution to handle any minor problems that may arise. The quorum requirements for convened meetings came under attack from many of the commentators. They argued that the requirement that a quorum include one member with non-scientific concerns, could give this individual absolute veto power. Alternatively, it was suggested that a quorum be composed of members whose background and expertise are appropriate to the particular application in question. Another issue that resulted in a number of comments was the reporting of noncompliance to the Secretary. Many commentators felt that the institution, not the IRB, should be responsible for notifying the Secretary of noncompliance by an investigator. Among those who expressed concern over this requirement, a few felt that any problems of noncompliance should be handled by the institution, while allowing HHS to audit their records.

Most commentators who supported the proposed IRB functions and operations requirements also suggested additions to this part of the regulations. Specifically, a few commentators requested that more detailed procedures be included for dealing with exempted research and expedited review. It was suggested by one commentator that HHS develop written procedures for reporting unanticipated problems which may be harmful. Commentators also expressed support for the requirement of convened meetings; however, one commentator requested a provision be included to permit mail approval on some occasions.

HHS Response: The HHS proposed regulations closely parallel the recommendations of the National Commission, relating to IRB functions and operations. One slight departure is the HHS requirement that the "nonscientific" member be present at all convened meetings where review is conducted, thus providing for the representation of various perspectives during IRB review, and enhancing the protection of human subjects. The public comment indicated concern that this could give an individual member veto power, simpy by refusing to attend a meeting. This kind of subversion of the IRB process is not anticipated, but even so, if overall membership is diverse, with more than one "nonscientific" member, this problem should not arise. The proposed regulations require, as do the current regulations, that a majority of the members be present at convened meetings. This should enable a thorough and equitable review, while at the same time not make it difficult to obtain a quorum. Concerning the requirement for convened meetings, HHS believes that, except where expedited review is authorized, they are necessary and will provide for verbal exchange and debate between members. Review and approval by mail might limit the depth of the review, thus impeding the protection of human subjects.

HHS believes that the guidelines requiring institutions to develop written IRB procedures provide sufficient flexibility for institutions and IRBs. The Department considers it an appropriate requirement that procedures be developed to determine whether there is a need for verification from sources other than the investigators that there has been no material change in certain protocols since their previous review. Verification should be available when, in the opinion of the IRB, verification will provide necessary protections for subjects involved in greater than minimal risk research. Finally, the Department should be notified of problems in research and of any continuing or serious noncompliance because HHS is obligated to examine problems associated with research supported by public funds. This obligation is even greater when questions of noncompliance arise.

HHS Decision: The general functions and operations of an IRB shall be:

(1) To conduct initial and continuing review of research and report the findings and actions to the investigator and the institution;

(2) To determine which projects require review more often than annually and which projects need verification from sources, other than the investigators, that no material changes have occurred since previous IRB review;

(3) To review proposed changes in research activities to insure that changes in approved research, during the period for which IRB approval has already been given, not be initiated without IRB review and approval if the changes would affect human subjects;

(4) To follow procedures to insure that the IRB and HHS receive reports of unanticipated problems involving risks to subjects and others;

(5) To conduct its review of research (except where an approved expedited review procedure is used) at convened meetings, at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas;

(6) To approve research only with the concurrence of a majority of those members in attendance; and

(7) To report to the institution and HHS any continuing or serious noncompliance, by the investigators, with the requirements and determinations of the IRB. (See § 46.108.)

What Should be the Requirements for IRB Review and Approval of Research?

Recommendation of the National Commission

An IRB should have the authority to review and approve, disapprove, require modification in and conduct continuing review (at least annually) of research involving human subjects conducted at the institution. When appropriate, the IRB should have the authority to suspend approval of research that is not being conducted in accordance with the determinations of the IRB or in which there is unexpected serious harm to subjects. Also as part of its continuing review responsibility, the IRB should have the authority to observe the consent process of the research itself on a sample or routine basis, or have a third party (not associated with the research or investigator) do so. IRB review and approval should be based on affirmative determinations that: (1) The research methods are appropriate to the objectives of the research and field of study; (2) the selection of the subjects is equitable; (3) the risks to subjects are minimized by using the safest procedures consistent with sound research design and, whenever appropriate, by using procedures being performed for diagnostic and treatment purposes; (4) risks to subjects are reasonable in relation to the anticipated benefits to subjects and importance of the knowledge to be gained (the possible long-range effects of applying knowledge gained in the research should not be considered as among those research risks falling within the purview of the IRB.); (5) informed consent will be sought under circumstances that provide sufficient opportunity for subjects to consider whether or not to participate and that minimize the possibility of coercion or undue influence; (6) informed consent will be communicated in language that is understandable to the subject and should be in accordance with certain basic elements of informed consent; and (7) informed consent will be appropriately documented unless it is determined to be unnecessary or inappropriate. The IRB should inform investigators of the basis for its decisions to disapprove or require modification in proposed research and give the investigators an opportunity to respond in person or in writing. (43 FR 56178–56179, 56182)

HHS Proposed Regulations

The review and approval requirements suggested by the National Commission are implemented. In addition, the requirements for continuing review are expanded. The IRB shall promptly report any suspension or termination of approval to the investigator, appropriate institutional officials and the Secretary, including a statement of the reasons for the IRB's actions. The proposed regulations added an additional approval requirement. The IRB shall, where appropriate, require that the research plan make adequate provision for monitoring the data collected to insure the safety of subjects. (44 FR 47695–47696).

Public Comment: Over one-third of the approximately 500 commentators wrote about one or more of the IRB review and approval requirements. Continuing review drew substantial opposition. A few commentators objected to the IRB functioning as a policing body, by requiring it to monitor the consent process. One commentator felt this placed the IRB in a conflict of interest situation, acting as both judge and jury, while another indicated this to be a possible intrusion into the doctor-patient relationship. Continuing review also was noted as being "bureaucratic make-work," placing significant demands on the IRB. A few commentators suggested that more precise criteria be given for continuing review. Strong opposition was voiced, concerning the requirement that IRBs report any suspension or termination of approval to the Secretary; they felt that this is an institutional responsibility. A few commentators thought the procedures for notifying the investigator of the IRB's decision should be deleted from the regulations, and each institution should be allowed to develop its own procedure. The investigator's right to appeal a negative decision was objected to by one commentator.

A majority of the public comments that addressed this issue were specifically directed at one or more of the requirements to be satisfied before approval can be given. Many commentators objected to an IRB determining if the research methods are appropriate to the objectives of the research and field of study. Among these commentators, many argued that the IRB does not have the expertise to make judgments on scientific merit, since it is primarily designed to insure the protection of human subjects. This requirement, some commentators indicated, could subvert academic freedom and possibly stifle innovative research. The same argument was given in opposition to the requirement that the IRB decide whether the selection of subjects is equitable, taking into account the purpose of the research. The commentators objected further, stating that this would require IRB review of the experimental design, which is not an appropriate responsibility for an IRB. Some commentators questioned the meaning of "equitable," and requested that it be more clearly defined. One commentator felt that the section on equitable selection of subjects should be expanded since it precedes other specific subparts where it is discussed further. The requirement, that risks be minimized by using sound research design and whenever appropriate, by using a procedure already being used on the patient for diagnostic purposes, was again felt by some commentators to be beyond the realm of the IRB's responsibility. They argued that this required the IRB to make judgments it is not qualified to make. One commentator was concerned that, as written, this requirement might curtail research design. Public comment also showed some opposition to the requirement that the IRB insure that the risks to subjects are reasonable in relation to anticipated benefits to subjects and importance of knowledge to be gained. One commentator felt that this required a value judgment, and that a uniform interpretation is not possible from one IRB to another. Another argued that risks can only be assessed in relation to the likely alternative course of action. Some felt the wording of this requirement was vague and obscure. the requirement that the IRB should not consider possible long-range effects of applying knowledge gained in the research as among those research risks which fall within the purview of its responsibility, met opposition. A few commentators felt that this was not clear and should be deleted. The requirement that IRB's insure that, where appropriate, the research plan makes adequate provision for monitoring the data collected to insure the safety of subjects was felt by a few commentators to be ambiguous and meaningless. They requested it be deleted from the regulations.

While most of the public comment was in opposition to one or more of the review and approval requirements, the overall response was positive and a few of the requirements met with an affirmative response. One commentator favored continuing review and suggested that it be carried out every six months. Others favored the provision for an investigator to respond in person or

in writing to a negative IRB decision. A few commentators supported the risk/benefit assessment described in the proposed regulations and agreed that the long-range effects of applying knowledge gained in the research should not be considered.

HHS Response: HHS has adopted the recommendations of the National Commission with regard to the IRB's review and approval requirements. The continuing review procedures is not "make-work," or "policing" since it is important that the IRB remain reasonably informed of the progress of the research to insure the protection of human subjects. Continuing review should be carried out through the use of periodic progress reports, submitted at least annually, but possibly more frequently, at the discretion of the IRB, depending on the risk involved in the research. The precise procedure adopted by the IRB for continuing review without unnecessarily hindering research should be left to the discretion of the IRB. Reporting requirements may vary from a simple annual notification, in the case of research involving little or no risk, to more frequent reporting in cases where the risks are greater. In certain cases, for example, large clinical trials, the IRB may require a special mechanism to carry out regular data and safety monitoring functions. The authority given to the IRB to monitor the consent process should not be construed as a requirement. Instead, HHS expects the IRB to utilize this authority only when it is necessary to insure the protection of subjects. The reporting to the Department of the suspension or termination of research is important since HHS has an obligation to examine problems associated with research supported by public funds, but institutions should, where possible, attempt to resolve any problems that arise. Regarding the guidelines for investigator notification, HHS believes the regulations are sufficiently flexible. HHS does intend that the investigators be clearly informed of the IRB's decision to disapprove or require modification in research. However, the IRB can select the mechanism to accomplish this purpose. The investigators do have a right to respond to a negative decision, however the IRB must finally decide on the ethical acceptability of proposed research involving human subjects.

Some commentators objected to one or more of the requirements to be satisfied before approval is given. In accord with the recommendations of the National Commission, HHS has decided that most of these are essential to the protection of human subjects. However, the requirement that the IRB review the appropriateness of the scientific methods is withdrawn. HHS feels that this is accomplished through mechanisms such as peer review and need not be addressed by these regulations. Consistent with the National Commission's recommendation for equitable selection of subjects, HHS believes that the proposed involvement of hospitalized patients, other institutionalized persons, or disproportionate numbers of racial or ethnic minorities or persons of low socioeconomic status should be justified. This requirement remains in the final regulations as a condition for approval. Since the number of subjects exposed to risk in research should be no larger than required by considerations of scientific soundness, the IRB should insure that research risks are justified by sound experimental design. However, care should be taken to assure that the size of the subject population is sufficient to yield reliable research results.

HHS believes, as did the National Commission, that information and human materials that are obtained for diagnostic purposes should be used whenever possible, provided this use will not unjustifiably increase the burdens of the ill. This provision is not intended to curtail research design, and will enhance the protection of human subjects. The proposed requirement that a risk/benefit analysis be done by the IRB, is necessary to assure a reasonable relationship between the harms that are risked, and the benefits for the subjects and the gains in knowledge that may reasonably be expected to result from the research. The risk/benefit analysis not only aids the IRB in making its judgment, but should help the IRB to determine whether the information that will be given to the subjects is sufficient for the subjects to determine whether or not to participate. In light of the public comment indicating confusion over this requirement, HHS has clarified its intent in the regulations. HHS advises that in evaluating risks and benefits to subjects, an IRB should consider only those risks and benefits that may result from the conduct of the research and not the possible long-range effects of research on public policy. The National Commission advised that, as the vulnerability of patients increased, it becomes more important to evaluate risks of harm and possible benefits and to require a reasonable relationship between them. Therefore, HHS cautions that, in risk assessment, the IRB should look at the context in which the research is conducted. For example, someone known to be under physical or emotional duress may be subject to greater risk, as a participant, than someone who is not under duress. In regard to data monitoring, HHS decided that, where appropriate, IRBs shall require that the research plan make adequate provisions for monitoring the data collected, to insure the safety of subjects; this procedure might be an appropriate requirement in large-scale clinical trials. The IRB may require the use of Data Safety Monitoring Boards in order to meet the requirements of this provision. HHS added the requirement that, where appropriate, additional safeguards be taken when vulnerable subjects are involved in the research, because several components of the Department felt that this provision would provide necessary protections where some or all of the subjects are vulnerable to coercion or undue influence.

HHS Decision: In conducting the review of research the IRB shall:

(1) Review and have authority to approve, require modification in, or disapprove all research activities covered by these regulations;

(2) Require that information given to subjects as a part of informed consent be in accordance with the requirements of § 46.116 and that additional information be provided to the subjects as deemed necessary by the IRB, to add to the protections of the rights and welfare of subjects;

(3) Require documentation of informed consent or waive documentation in accordance with § 46.117;

(4) Notify in writing the investigator and the institution of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the research is disapproved, the investigator shall be given a statement of the reasons for the decision and the opportunity to respond in person or in writing;

(5) Conduct continuing review of research covered by these regulations at intervals appropriate to the degree of risk, but not less than once a year, and have the authority to observe or have a third party observe the consent process and the research (see § 46.109); and

(6) Have authority to suspend or terminate approval of research that is not in compliance with the IRB's determinations or has been associated with unexpected serious harm to subjects. Any such action shall be reported promptly to the investigator, appropriate institutional officials, and the Secretary, citing the reasons for the IRB's action. (See § 46.113.)

In order to approve research the IRB shall insure that:

(1) Risks to subjects are minimized by using the safest procedures consistent with sound research design and whenever appropriate, by using procedures already being performed for diagnostic and treatment purposes;

(2) Risks to subjects are reasonable in relation to anticipated benefits to subjects and the importance of the knowledge that may reasonably be expected to result. When assessing risk the IRB should not consider the possible long-range effects of applying knowledge gained in the research;

(3) Selection of subjects is equitable, taking into account the purposes of the research;

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with § 46.116;

(5) Informed consent will be appropriately documented in accordance with § 46.117;

(6) Where appropriate, the research plan makes adequate provision for monitoring the data collected to insure the safety of subjects;

(7) Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data; and

(8) Additional safeguards are taken when vulnerable subjects are involved in the research, in order to protect against coercion or undue influence. (See § 46.111.)

Should the Regulations Contain a Provision for Expedited Review?

Recommendation of the National Commission

Expedited review should be used by IRBs for categories of research that recur with some regularity, present no more than minimal risk to subjects, and present no serious ethical issue requiring IRB deliberations. This procedure can also be used to review minor changes in previously reviewed research. The IRB chairperson, or an experienced reviewer, designated by the chairperson, should carry out the expedited review. The reviewer should have the authority to approve the research, request modification in the proposal or refer the proposal to the IRB for full review. All IRB members should receive prompt notification of protocols approved by expedited review and any member should be able to request full committee consideration. The IRB's authority to use an expedited review procedure should be revoked if there are indications that it is being improperly used. (43 FR 56182)

HHS Proposed Regulations

The National Commission's recommendation for an expedited review procedure is essentially implemented, except for the requirements that all IRB members be promptly notified of protocols approved by expedited review and be able to request full committee consideration. The IRB shall describe its expedited review procedure in its General Assurance. (44 FR 47696)

Public Comment: Of the approximately 75 comments addressing expedited review, a majority favored the implementation of this procedure. Expedited review, many commentators agreed, would reduce the burden on the full IRB and enable it to give more thorough consideration to research involving greater than minimal risk. Many commentators felt that the chair person should be able to designate someone other than an IRB member (for example, a staff member), to carry out the expedited review. The suggestion was made, by a few commentators, that a subcommittee of three should be used for expedited review, as opposed to entrusting it to a single individual. Several commentators approved of the procedure, but felt that it needs careful control and the reviewer must be given sufficient information to evaluate the research. One commentator argued that expedited review should be permitted regardless of whether the institution has a General Assurance. There was support for expedited review being used to review minor changes in research, and a few commentators felt that it should also be used for annual reapproval. One commentator, while in favor of expedited review, argued that this was not truly an "expedited" procedure. He suggested that a review procedure was needed that permits the reviewer to apply only those requirements that are appropriate to the particular research project and appropriate to the level of risk.

While the public comment generally demonstrated support for expedited review, there were some commentators who objected to or felt ambivalent about expedited review. A few commentators said that the procedure put too much power in the IRB chairperson. They argued further that all research should receive the same review.

HHS Response: HHS agrees with the National Commission's recommendation that an expedited review procedure be adopted for use by IRBs. Since the public comment demonstrated overall support for the expedited review procedure described in the proposed regulations, very few modifications were made. HHS realizes that allowing IRB staff members to perform expedited review would alleviate some of the burdens on the IRB. However, unless these individuals become members of the IRB they are not permitted to carry out this review under the requirements of these regulations. Public comment indicated concern over one individual performing expedited review. HHS has included in the regulations the option for an IRB to determine whether one or more individuals should conduct this procedure. HHS has eliminated the distinction between General and Special Assurances in the final regulations.

Consequently, the public comment that an institution should not be required to have a General Assurance in order to conduct expedited review has been addressed. Research subjected to expedited review, however, must still meet all the requirements for approval as described in these regulations. This requirement is implicit but not clearly stated in both the National Commission's recommendations and the proposed regulations. In response to the National Commission's recommendations, HHS decided to require that IRBs adopt a procedure for keeping members advised of research approved under expedited review. Public comment suggested that annual reapprovals, in addition to minor changes in research, be eligible for expedited review. These annual reviews may only be conducted using the expedited review procedure if the proposal meets all of the expedited review requirements.

HHS Decision: Under the provisions for expedited review:

(1) An IRB may review some or all of the research appearing on the list of Expedited Categories of Research (to be published by the Secretary in the Federal Register) through an expedited review procedure, if the research involves no more than minimal risk;

(2) The IRB may also use expedited review to review minor changes in previously approved research during the period for which approval is authorized;

(3) The review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among IRB members;

(4) The reviewers may exercise all of the authorities of the IRB, except they may not disapprove the research;

(5) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure; and

(6) The Secretary may restrict, suspend, or terminate an institution's or IRB's use of expedited review when necessary to protect the rights or welfare of subjects. (See § 46.110.)

What Categories of Research Should be Eligible for Expedited Review?

Recommendation of the National Commission

Expedited review can be appropriately used for minimal risk research involving the following procedures:

(1) Collection (in a nondisfiguring manner) of hair, nail clippings and deciduous teeth;

(2) Collection for analysis of excreta and external secretions including sweat, saliva, placenta expelled at delivery, umbilical cord blood after the cord is clamped at delivery, and amniotic fluid at the time of artificial rupture of the membranes prior to or during labor;

(3) Recording of data from adults through the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. (These procedures include weighing, electrocardiogram, electroencephalogram, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography.);

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in a six-week period, from subjects 18 years of age and over who are not anemic, pregnant or in a seriously weakened condition;

(5) Collection of both supra- and subgingival plaque, provided the procedure is no more invasive than routine prophylaetic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques;

(6) Voice recordings made for research purposes such as investigations of speech deficits;

(7) Moderate exercise by healthy volunteers;

(8) The use of survey research instruments (interviews or questionnaires) and psychological tests, interviews and procedures that are part of the standard battery of assessments used by psychologists in diagnostic studies and in the evaluation of judgmental, perceptual, learning and psychomotor processes, provided that the subjects are normal volunteers and that the data will be gathered anonymously or that confidentiality will be protected by procedures appropriate to the sensitivity of the data;

(9) Program evaluation projects that entail no deviation for subjects from the normal requirements of their involvement in the program being evaluated or benefits related to their participation in such programs; and

(10) Research using standard protocols or noninvasive procedures generally accepted as presenting no more than minimal risk, even when done by students. (43 FR 56182)

HHS Proposed Regulations

Except for categories (8) and (10), the National Commission's recommendation is implemented. (44 FR 47696)

Public Comment: Nearly fifty commentators wrote concerning the research categories eligible for expedited review. Among these, a majority suggested changes or additions to the proposed list. Many commentators pointed out that the National Commission's list of expedited review categories was not intended to be comprehensive; but only to serve as an example of the minimal risk activities which could be reviewed using an expedited procedure.

HHS Response: HHS accepted for the most part the list of expedited categories recommended by the National Commission. The category of research involving "program evaluation activities that entail no deviation for subjects from the normal requirements of their involvement in the program being evaluated or benefits related to their participation in such programs," is not included in the final list of expedited categories. This type of research activity is generally exempt from the regulations, if it involves no more than minimal risk to subjects (§ 46.101(b)).

The National Commission recommended that research using survey instruments, psychological tests and interviews in which confidentiality is protected, should receive expedited review. HHS, however, has decided to exempt from the regulations most survey and interview research (§ 46.101(b)).

In addition to the categories listed in the proposed regulations HHS added three other categories of research appropriate for expedited review: (1) Research on individual or group behavior or characteristics of individuals such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to subjects; (2) the study of existing data, documents, records, pathological specimens or diagnostic specimens; and (3) research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required. These three categories of research recur with some regularity, present no more than minimal risk to subjects, and present no serious ethical issue requiring full IRB deliberation.

HHS has decided that the expedited review categories will be, for the present, narrowly defined and limited in number. Once the IRBs have had an opportunity to apply this new technique, and evaluate its adequacy, it may become evident that adjustments in the list should be made. Appropriate revisions to the list will be published in the Federal Register.

HHS Decision: The Secretary has published a list of categories of research which may be reviewed by the IRB through an expedited review procedure. The Secretary will amend this list, as appropriate, through republication in the Federal Register. The initial list is published in the January 26, 1981 Federal Register.

What Should be the Review Responsibilities of the Institution?

Recommendation of the National Commission

Institutions should be required to submit assurances that research will be conducted in accordance with any restrictions or conditions imposed by the IRB. (43 FR 56177)

HHS Proposed Regulations

The HHS proposed regulations do not address specifically the issue of review by the institution.

Public Comment: Several commentators questioned why HHS did not address the review responsibilities of the institution. Specifically, the commentators felt that a statement prohibiting the institution from overruling a disapproval of research by the IRB was erroneously missing from the proposed regulations.

HHS Response: Discussions of assurances and IRB functions and operations above clearly address requirements assumed by the institution regarding the establishment of an IRB for the review and approval of research activities involving human subjects. However, an institution need not conduct or sponsor research that it does not choose to conduct or sponsor, and therefore has final authority to disapprove any research activities approved by the IRB. An institution may not approve research covered by these regulations which has not been approved by an IRB. However, an institution may provide procedures whereby an IRB decision may be appealed to another IRB. The final

regulations take into consideration the public comment and clarify this point in the section dealing with review by institutions.

HHS Decision: An institution:

(1) May review, approve or disapprove research covered by these regulations that has been reviewed and approved by an IRB; and

(2) May not approve research covered by these regulations that has not been approved by an IRB. (See § 46.112.)

What Should be the Requirements of the Regulations Concerning Cooperative Research?

Recommendation of the National Commission

While it is desirable that an institution at which research involving human subjects is conducted establish an IRB, that institution may enter into an agreement with another institution to establish a single IRB or to arrange for review by a neighboring institution's IRB. (43 FR 56177)

HHS Proposed Regulations

The grantee or prime contractor remains responsible to the Department for safeguarding the rights and welfare of human subjects. When cooperating institutions conduct some or all of the research involving some or all of these subjects, each cooperating institution shall comply with these regulations as though it received support for its participation in the project directly. (44 FR 47698)

Public Comment: Of the ten comments addressing this issue, several were directed toward the conduct of research outside the United States. These commentators disagreed with the requirement that the grantee or prime contractor be responsible for another institution's compliance with the regulations. A few commentators argued that requiring compliance from cooperating institutions is beyond the scope of HHS regulatory authority and that the responsibility should reside entirely within the grantee or prime contractor. A similar number of commentators felt that the HHS proposed regulations regarding cooperative research were more succinct and provided better direction for IRBs than current regulations (45 CFR Part 46).

HHS Response: The IRB review requirements regarding cooperative research activities are very similar to corresponding requirements in current regulations (45 CFR Part 46) and essentially parallel the recommendations of the National Commission. HHS disagrees with the contention that the responsibility for safeguarding the rights and welfare of subjects should reside only with the grantee or prime contractor. Although the ultimate responsibility is that of the grantee or prime contractor, cooperating institutions share in the responsibility for protecting human subjects. The National Commission specifically stated that institutions should take such steps as are necessary and appropriate to assure compliance by all investigators with IRB requirements and determinations. The requirements in the proposed regulations that the Secretary give approval before joint review or other review arrangements are employed is deleted in the final regulations in order to give the institutions involved in cooperative research projects maximum freedom of discretion while still maintaining adequate protection for the rights and welfare of subjects.

HHS Decision: The requirements involving cooperative research projects are:

(1) In cooperative research projects the grantee or primary contractor remains responsible to the Department for safeguarding the rights and welfare of human subjects; (2) when cooperating institutions conduct some or all of the research involving some or all of these subjects, each cooperating institution shall comply with these regulations as though it received funds for its participation in the project directly; (3) cooperating institutions may use joint review, reliance upon the review of another qualified IRB, or similar arrangements aimed at avoiding duplication of effort. (See § 46.114.)

What Should be the IRB's Recordkeeping Responsibilities?

Recommendation of the National Commission

The IRB should maintain appropriate records, including copies of proposals reviewed, approved consent forms, minutes of IRB meetings, progress reports submitted by investigators, reports of injuries to subjects, and records of continuing review activities. Minutes of IRB meetings should be in sufficient detail to show the basis of actions taken by the IRB. All IRB records should be maintained for five years after completion of the research. (43 FR 56178–56179)

HHS Proposed Regulations

The National Commission recommendations for IRB recordkeeping responsibilities are implemented. In addition, some of the recordkeeping requirements are expanded. The IRB shall include pertinent information on IRB members in its records. Minutes of IRB meetings shall be in sufficient detail to show attendance at IRB meetings, actions taken by the IRB, the number of members voting for and against these actions, and the basis for the actions (including a written summary of the discussion of substantive issues and their resolution). A copy of any new information provided to the subject during the course of the research shall be retained in the IRB's records. IRB records shall be accessible for inspection by Department representatives and retained for at least five years after completion of the research, or such period as may be specified by program requirements. (44 FR 47694, 47697)

Public Comment: A majority of the 20 public commentators addressing IRB recordkeeping responsibilities were opposed to some aspect of the requirements. Among these, many commentators argued that the maintenance of detailed minutes is ineffecient, costly unnecessary, unworkable, and might inhibit discussion. The reference to progress reports, a few commentators argued, should be deleted, since it might be inferred that these are a requirement. One commentator suggested that an institution determine its own policy on IRB recordkeeping responsibilities. A number of commentators questioned the meaning in the regulations of "completion of research," "program" and "new information." A few commentators argued against the five-year requirement for retention of records. Among these, some suggested that a three-year time period be used, thus being consistent with the statutes of limitation in many states. A few commentators argued that the regulations should reflect the confidentiality of IRB records and only allow IRB members, HHS officials and the investigator (into his own file) access to the records. More generally, one commentator objected to IRB recordkeeping responsibilities being a part of the assurance requirements.

HHS Response: The National Commission recommended, and HHS agrees, that it is important to maintain detailed minutes of IRB meetings. However, HHS decided to reduce the burden on IRBs by requiring that the minutes contain: (1) A basis for IRB action only when the research is disapproved, or requires modification and (2) a written summary of the IRB discussion and resolution only when it involves controversial issues. HHS realizes that the maintenance of detailed

minutes could possibly hinder free discussions. These minutes, however, may aid the IRB, institution, or Department in future reviews, or in resolving a problem with the research. The submission of progress reports is essential to the continuing review procedure and will assist the IRB in its continuing review of research. The requirements for IRB recordkeeping responsibilities included in the regulations are consistent with the recommendations of the National Commission. Any additions to the IRB records requirement by HHS, such as a list of IRB members and a copy of the IRB's written procedures are not intended to burden the IRB, but can easily be accomplished by keeping a copy of the institution's assurance agreement on file. In response to public comment indicating confusion about the meaning of "new information," HHS has changed this to "significant new findings." Diverging from the National Commission's recommendations, but consistent with public comment, HHS decided to require that IRB records be retained for at least three years (rather than five) after termination of the last approval period. However, each IRB does have discretion to choose a longer time than three years for record retention. HHS intends that access to IRB records be limited to IRB members, Department officials and investigators (into their own file). HHS requires access to IRB records to properly monitor research conducted with public funds. The question of confidentiality of IRB records is discussed further below. HHS decided to delete the requirement that new information given to subjects, during the course of the research, be reviewed and approved by an IRB. This was an unnecessary burden on the IRB and added no greater protection to human subjects. The reorganization of the regulations resulted in the collection and placement of all IRB recordkeeping responsibilities into a separate section.

HHS Decision: An institution, or where appropriate an IRB, shall maintain adequate records of the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects;

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings, actions taken by the IRB, the number of members voting for and against these actions, and the basis for requiring changes in or disapproving research and a written summary of the discussion of controverted issues and their resolution;

(3) Records of continuing review activities;

(4) Copies of all correspondence between the IRB and the investigators;

(5) A list of IRB members as required by § 46.103(b)(3);

(6) Written procedures for the IRB as required by § 46.103(b)(4); and

(7) Statements of significant new findings provided to subjects, as required by § 46.116(b)(5).

(b) The records required by this regulation shall be retained for at least three years after completion of the research, and the records shall be accessible for inspection and copying by authorized representatives of the Department at reasonable times and in a reasonable manner. (See § 46.115.)

What Should be the Elements of Informed Consent?

Recommendation of the National Commission

The Secretary should require by regulation that all research involving human subjects shall be reviewed by an IRB and that the approval of such research shall be based upon affirmative determinations by the IRB that:

(1) Informed consent will be sought under circumstances that provide sufficient opportunity for subjects to consider whether or not to participate, and that minimize the possibility of coercion or undue influence;

(2) Informed consent will be based upon communicating to subjects, in language they can understand, information that the subjects may reasonably be expected to desire in considering whether or not to participate, generally including:

(a) Notification that participation is voluntary, that refusal to participate will involve no penalties or loss of benefits to which subjects are otherwise entitled, that participation can be terminated at any time, and that the conditions of such termination are stated;

(b) The aims and specific purposes of the research, and whether it includes procedures designed to provide direct benefit;

(c) What will happen to subjects in the research, and what they will be expected to do;

(d) Any reasonably foreseeable risks to subjects, and whether treatment or compensation is available if harm occurs;

(e) Who is conducting the study, who is funding it, and who should be contacted if harm occurs or there are complaints; and

(f) Any additional costs to subjects or third parties that may result from participation.

(3) Informed consent will be documented unless the IRB determines that written consent is not necessary or appropriate because the existence of signed consent forms would place subjects at risk, or the research presents no more than minimal risk and involves no procedures for which written consent is normally required. The National Commission also recommended that there be adequate provisions to protect the privacy of subjects. (43 FR 56179–56182).

HHS Proposed Regulations

The recommendations of the National Commission are essentially implemented. In addition, a statement that new information developed during the course of the research which may relate to the subject's willingness to continue to participate shall be provided to the subject. When appropriate, an IRB shall require additional elements of informed consent such as (1) a statement that the research may involve risks which are currently unforeseeable, (2) a description of when an investigator may terminate a subject's participation without regard to the subject's consent. (44 FR 47696–47697.)

Public Comment: Nearly 100 commentators addressed the issue of the elements of informed consent. The bulk of these commentators expressed general satisfaction with the elements published in the HHS proposed regulations, though many suggested minor changes in content and detail.

Critics made two major points: First, the proposed list is too long, too cumbersome, and out of proportion to harms that have been identified in the past; and second, HHS should retain the list of elements of informed consent required by current regulations.

Specific additional points raised included: (1) The consent procedure need not include information concerning IRB approval of the solicitation of subjects, (2) subjects should be informed when no personal benefit to them is foreseen, (3) the term "new information" should be more specific, (4) compensation and medical treatment availability statements should be deleted and the issue examined more thoroughly, (5) the term "injury" should be replaced by "physical injury."

HHS Response: Most commentators favored the proposed elements of informed consent, but a number felt that some elements could be reworded and combined to clarify and shorten the list. It response, the Department has revised the basic list and moved several

elements to the additional list that an IRB shall require only when appropriate.

Regarding the additional points raised by commentators, HHS responds as follows: (1) HHS agrees with the commentators and has removed this requirement. (2) HHS disagrees because it is implicit in the element requiring disclosure of benefits to be gained that the subject will be informed if no personal benefits are foreseen. (3) HHS agrees with public comment and has inserted new terminology in the final regulations. (4) HHS disagrees with the commentators since the statement has been required by current regulations for nearly two years with no demonstrated ill effect on institutions; however, in response to public comment, the Department has limited the applicability of this requirement to activities involving more than minimal risk to subjects. (5) HHS disagrees because subjects need to consider, in making their decision whether to volunteer for research, what mechanisms, if any, are available for care and what mechanisms, if any, are available for compensation in the event of a research-related injury; the Department sees no reason to limit such disclosure to only one kind of injury.

HHS Decision: Information conveyed in the informed consent procedure shall: (1) Include a reasonable opportunity for the subject to consider participation; (2) be expressed in understandable language; (3) exclude exculpatory language; (4) contain a reasonable explanation of the research, its purposes, procedures, and duration of participation; (5) describe any benefits; (6) describe appropriate alternative procedures; (7) describe the extent to which confidentiality of records will be maintained; (8) explain the availability of compensation and the availability of treatment if injury occurs; (9) contain instructions concerning who may be contacted for answers to pertinent questions; and (10) state the conditions of participation.

Where appropriate one or more of the following elements shall also be provided. The informed consent procedure shall: (1) State that the procedure may involve unforeseeable risks; (2) state circumstances for termination of a subject's participation by the investigator; (3) state possible additional costs to the subject; (4) describe consequences of a subject's withdrawal from participation; (5) state that significant new findings will be provided to the subject; and (6) state the approximate number of subjects in the study.

The IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent listed above provided certain conditions are met.

HHS and the National Commission recognize that individuals possess varying degrees of capacity to understand and that a particular individual's capacity can vary from time to time. The final regulations allow for the alteration or waiver of the elements of informed consent, and therefore can serve as a basis for tailoring the amount and complexity of information to be provided in the consent process where potential subjects are likely to have somewhat impaired or limited capacity to understand. Alteration or waiver of consent elements might be approved, for example, for research of no greater than minimal risk involving as subjects persons with chronic or acute mental disabilities, victims of accidents, persons being treated with drugs which impair mental functioning, aged persons with diminished capacity, or persons of limited intelligence. Under these circumstances, these alterations or waivers should only be approved: (1) For use with subjects who are functionally and legally competent to give consent, and (2) if the purpose is to insure that these subjects receive information they can reasonably be expected to understand in order to make a knowledgeable decision regarding their participation in the research. In such cases, the IRB shall insure that procedures are developed to seek consent from subjects at a time when they can make a reasonable judgment, and to determine that each subject has sufficient capacity to give consent.

HHS has proposed that certain large-scale studies be exempt from the regulations, in accord with a notice issued by the Department in 1975 (41 FR 26572). HHS has reconsidered this proposal and feels that IRB review of studies of federal, state, or local benefit or service programs is appropriate even where it may be impracticable to obtain the informed consent of the subject. For example, some projects may be impossible to conduct without affecting all residents of a city, or all beneficiaries of a program, and it is simply impossible to obtain the consent of every person in a large population even if no risks are involved. Therefore, research of this kind will not be exempt from IRB review and approval requirements. However, an IRB may approve the waiver of some or all of the informed consent requirements of these studies. (See § 46.116.)

What Should be the Requirements for Documentation of Informed Consent?

Recommendation of the National Commission

Informed consent should be appropriately documented by the use of written consent forms, and a copy of the consent form given to the subject. When a short form or no written consent is used it is important for the IRB to review the investigator's plans regarding information that is to be provided orally. The IRB may waive the requirement for documentation of consent in the interest of protecting the subjects when a breach of confidentiality may be harmful to them or when the research would be burdened by a requirement for written documentation and the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context. (43 FR 56179–56181)

HHS Proposed Regulations

The recommendation of the National Commission is essentially implemented. In addition, when a short form of written consent, indicating that the elements of informed consent have been presented orally to the subject or the subject's legally authorized representative, is used, there must be a written summary of the presentation, signed by those obtaining the consent and by the witness to the oral presentation. Copies of the short form and the summary shall be provided to the subject or the representative. Regarding the IRB waiver of documentation of consent, the subject shall be asked whether the subject wants there to be documenation linking the subject with the research; the subject's wishes will govern. In cases where new information is provided to the subject during the course of the research, this information shall be reviewed and approved by the IRB and a copy of such information retained by the IRB. (44 FR 47697)

Public Comment: Of the fifteen public comments addressing this issue, a few favored the documentation requirements as proposed. Likewise, a few commentators stated that the required documentation was too extensive and exceeded reasonable need. Several commentators addressed the section dealing with the IRB's authority to waive the requirement for the investigator to obtain documentation of informed consent. While some commentators felt that the IRB should not have the authority to waive the requirement, a similar number of commentators agreed with this waiver authority. A few commentators also

questioned the intent and meaning of the terminology "new information" that is provided to the subject during the course of the research.

HHS Response: The proposed requirements for documentation of informed consent are very similar to the documentation requirements in the current regulations (45 CFR 46) and parallel the recommendations of the National Commission. Specifically, the proposed HHS requirements for documentation of informed consent represent a continuance of Department policy regarding this issue. HHS disagrees with the argument that required documentation exceeds reasonable need. HHS also wishes to point out that, in addition to the possibility of a waiver of documentation, a short form of written documentation may be approved by an IRB. Very few public comments addressed this issue, indicating that the existing regulations and the proposed regulations do not pose significant problems regarding documentation of informed consent. Regarding the waiver authority of the IRB, HHS feels that there are convincing arguments raised by the National Commission as well as public comment to maintain this authority within the IRB. One such argument is that the creation of a link between the subject and the research may be harmful to the subject if a breach of confidentiality occurs. However, if the risk of harm, other than that which might arise from breach of confidentiality, is greater than minimal, a waiver may not be issued based on the risk of this breach. The requirement for IRB approval of new information provided to the subject during the course of the research is removed from the final regulations. Information on significant new findings which is given to the subject shall be reported to the IRB, as required by § 46.115.

HHS Decision: Documentation of informed consent:

(1) Shall consist of a written consent form, approved by the IRB, signed by the subject or the subject's legally authorized representative, and a copy given to the person signing the form.

(2) May be a written consent form embodying the elements of informed consent required by § 46.116, which may be read to the subject or the subject's legally authorized representative. The investigator shall give either the subject or the representative adequate opportunity to read it before it is signed.

(3) May be a short form written consent document stating that the elements of informed consent required by § 46.116 have been presented orally to the subject or the subject's legally authorized representative. There shall be a witness to the oral presentation. The IRB shall approve a written summary of what is to be said to the subject or the representative. The short form will be signed by the subject or the representative and by the witness. The summary will be signed by the witness and by the person actually obtaining consent of the subject.

(4) May be waived by the IRB if the IRB finds either (i) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or (ii) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context.

Where the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research. (See § 46.117.)

Should IRBs Review Applications and Proposals Lacking Definite Plans for Involvement of Human Subjects, Before a Grant Award may be Made?

Recommendation of the National Commission

IRB review does not necessarily have to precede application for a grant or contract, although such review should always precede the involvement of human subjects in the research. Review prior to or within a specified time after submission of an application, is most appropriate. (43 FR 56177)

HHS Proposed Regulations

Applications, submitted to the Department without definite plans for involving human subjects, need not be reviewed by an IRB before a grant or contract award may be made. However, no human subjects may be involved in research supported by these awards, until the project has been reviewed and approved by an IRB and certification submitted to the Department. (44 FR 47697)

Public Comment: Eight public comments addressed the issue of research lacking definite plans for involvement of human subjects. Among these a majority favored this addition to the regulations. One commentator requested that "training grants" be clarified, as "research training grants." A few commentators objected to the requirement that certification of IRB approval be submitted to the Department.

HHS Response: In response to public comment, the word "research" was added to clarify the category of training grants affected. HHS has an obligation to remain informed of any changes in research supported by public funds.

HHS Decision: Applications and proposals submitted to the Department without definite plans for involving human subjects need not be reviewed by an IRB before grant, contract or cooperative agreement funds are awarded. However, except for exempted research, no human subject may be involved in any project supported by these awards until the project has been reviewed and approved by an IRB, as provided in these regulations, and certification submitted to the Department. (See § 46.118.)

What Should be the Investigational New Drug or Medical Device 30-day Delay Requirement?

Recommendation of the National Commission

The National Commission made no specific recommendation on an investigational new drug or device 30-day delay requirement.

HHS Proposed Regulations

Where an institution is required to prepare or submit a certification under these regulations, and an investigational new drug is involved, the drug shall be identified in the certification together with a statement that: (1) The 30-day delay required has elapsed and the FDA has not required that the sponsor continue to withhold or restrict use of the drug in human subjects; or (2) that the FDA has waived the requirement. If the 30-day delay interval has not expired or been waived, a statement shall be forwarded to the Department upon expiration or receipt of a waiver. Certification shall be withheld until such a statement is received. (44 FR 47698)

Public Comment: No significant public comment was received on this issue.

HHS Response: HHS has extended the applicability of this section of the regulations to medical devices which are subject to the Medical Devices Amendments of 1976 (21 CFR 812.3(m)). In addition, this section was rewritten to enhance clarity but without further change in overall substance.

HHS Decision: When an institution is required to prepare or to submit a certification with an application or

proposal covered by these regulations and the application or proposal involves an investigational new drug or a significant risk device, the institution shall:

(1) State whether the 30-day interval required for investigational new drugs or significant risk devices has elapsed, or whether the FDA has waived that requirement;

(2) State whether the FDA has requested that the sponsor continue to withhold or restrict the use of the drug or device in human subjects, if the 30-day delay interval has expired;

(3) Send a statement to the Department upon expiration of the interval, if the 30-day delay interval had not expired or been waived at the time of certification.

The Department will not consider certification acceptable until the institution submits a statement that: (1) The 30-day delay interval has elapsed and FDA has not requested the use of the drug or device limited; or (2) FDA has waived the 30-day interval. (See § 46.121.)

Should HHS Be Able to Prematurely Terminate Research Funding and How Should This Affect the Evaluation of Subsequent Applications and Proposals by the Institution?

Recommendation of the National Commission

The National Commission made no specific recommendation on HHS termination of research funding.

HHS Proposed Regulations

If in the judgment of the Secretary an institution is not in compliance with the terms of these regulations, with respect to any particular research project, the Secretary may require the Department to terminate or suspend funding. In making determinations on applications for funding, the Secretary may take into account, in addition to other eligibility requirements, such factors as:

(1) Whether the applicant has been subject to termination or suspension;

(2) Whether the applicant or person responsible for the scientific or technical aspects of the activity has in the judgment of the Secretary failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not Department funds were involved); and

(3) Whether, where past deficiencies have existed in discharging this responsibility, adequate steps have, in the judgment of the Secretary, been taken to eliminate these deficiencies. (44 FR 47698)

Public Comment: Only two commentators addressed the issue of termination and suspension of funding. One of the commentators suggested that the Secretary be required to inform institutions of the reasons for termination, while both argued that HHS should institute a mechanism for appeal.

HHS Response: Upon suspension or termination of funding, Department program requirements insure that the institution affected will receive sufficient documentation of the reasons for this action. The Department already has procedures in place, through which an institution can provide supplemental information in opposition to a position taken by the Secretary. HHS decided to delete from the regulations the requirement that the Secretary consider whether adequate steps had been taken to eliminate any past deficiencies in the protection of human subjects. This was determined to be unnecessary, when the other requirements of this section are considered. The provision was also reworded for purposes of clarity.

HHS Decision: If it is determined that an institution is out of compliance with these regulations, the Secretary may require that the Department terminate or suspend funding for the project, in the manner prescribed in applicable program requirements. In making decisions about funding applications or proposals covered by these regulations the Secretary may take into account, in addition to all other eligibility requirements and program criteria, such factors as:

(1) Whether the applicant has ever had funding for a project suspended or terminated; and

(2) Whether the applicant or the person directing the scientific or technical aspects of the activity has in the judgment of the Secretary materially failed to discharge responsibility for the protection of the rights and welfare of subjects (whether or not Department funds were involved). (See § 46.123.)

Should There Be Direct Compensation and Protections Against Liability for IRB Members?

Recommendation of the National Commission

The IRB should be provided with protection for members in connection with any liability arising out of their performance of duties while serving on the IRB. This protection can be provided in several ways including sovereign immunity, insurance, indemnification by the institution, or specific provisions of state law. The institution should assure that such protection is provided either by law or by means of institutional arrangements. The National Commission also recommended that federal law should be enacted to provide direct cost funding for IRBs, a portion of which should be used to compensate members. (43 FR 56177–56179)

HHS Proposed Regulations

There is no provision for direct compensation of or liability protection for IRB members.

Public Comment: All of the commentators who addressed the issue of liability protection for IRBs felt that members should assume no personal liability related to their service on an IRB. One commentator argued that decisions concerning compensation of IRB members should be determined by individual institutions.

HHS Response: Although the National Commission recommended that protection be provided for IRB members in connection with any liability arising out of their performance of duties while serving on an IRB, the Department is hesitant to require liability coverage because there is no certainty that feasible mechanisms are available to provide this protection. Furthermore, the Department is unaware of any successful negligence action which has named an IRB member as a defendant. It therefore believes that liability protection would be an unnecessary and costly requirement. The National Commission recommended that federal law be enacted to provide direct compensation for IRB members. However, no federal legislation for this purpose is currently in force or pending. Unless the Congress enacts legislation implementing the National Commission's recommendation, compensation for IRB members will remain an indirect cost item.

HHS Decision: HHS has decided not to address in these regulations the issues of compensation for IRB members or liability protection for IRB members. Institutions are, of course, free to seek legislation or to make institutional arrangements for liability coverage for IRB members.

Should There Be a Requirement for Confidentiality of Subject Records in the Regulations?

Recommendation of the National Commission

The National Commission recommended that the Secretary, HHS, should require by regulation that there are adequate provisions to protect the privacy of subjects and the confidentiality of data. (44 FR 47691)

HHS Proposed Regulations

Except when otherwise provided by federal, state or local law, information in the records or in the possession of an institution acquired in connection with an activity covered by these regulations which refers to or can be identified with a particular subject, may not be disclosed except: (a) With the consent of the subject or his legally authorized representative; or (b) as may be necessary for the Secretary to carry out his responsibilities. (44 FR 47698)

Public Comment: Fourteen commentators addressed the issues of the privacy of subjects and the confidentiality of information pertaining to them. A majority of those who commented requested deletion or at least modification of this requirement.

HHS Response: The federal government and some states have statutes which provide for the privacy of human subjects and the confidentiality of information pertaining to them. However, few of these laws provide absolute protections. Consequently, it is inappropriate to require institutions to give assurances of privacy and confidentiality which they may not be able to honor in all circumstances.

HHS Decision: The regulations do not have specific requirements describing how personal information must be maintained or to whom it may be disclosed. However, IRBs will be required to determine that, where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data (§ 46.111(a)(7)). Confidentiality provisions should meet reasonable standards for protection of privacy and comply with applicable laws. Reasonable protection might in some instances include legal protection available upon application (such as the immunity from legal process of certain drug and alcohol abuse and mental health research subject data under sec. 303 of the PHS Act). In addition, the informed consent provision of the regulations (§ 46.116) requires disclosure to each subject of the extent to which confidentiality of records identifying the subject will be maintained.

The Following Sections of the Regulations Were not Controversial and Were Adopted as Proposed

Section 46.119 Research Undertaken Without the Intention of Involving Human Subjects.

Section 46.120 Evaluation and Disposition of Applications and Proposals.

Section 46.122 Use of Federal Funds.

Section 46.124 Conditions.

Dated: December 12, 1980.

Julius B. Richmond,

Assistant Secretary for Health and Surgeon General.

Approved: January 13, 1981.

Patricia Roberts Harris,

Secretary.

Accordingly, Part 46 of 45 CFR is amended below by:

§ 46.205 [Amended]

1. Amending § 46.205(b) by changing the reference in the eighth line from "§ 46.115" to "§ 46.120."

§ 46.304 [Amended]

2. Amending § 46.304 by changing the reference in the second line from "§ 46.106" to "§ 46.107."

Subparts A and D [Removed]

3. Removing Subparts A and D and adding the following new Subpart A.

Subpart A—Basic HHS Policy for Protection of Human Research Subjects

Sec.

Authority: 5 U.S.C. 301; sec. 474(a), 88 Stat. 352 (42 U.S.C. 2891-3(a)).

§ 46.101 To what do these regulations apply?

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving human subjects conducted by the Department of Health and Human Services or funded in whole or in part by a Department grant, contract, cooperative agreement or fellowship.

(1) This includes research conducted by Department employees, except each Principal Operating Component head may adopt such nonsubstantive, procedural modifications as may be appropriate from an administrative standpoint.

(2) It also includes research conducted or funded by the Department of Health and Human Services outside the United States, but in appropriate circumstances, the Secretary may, under paragraph (e) of this section waive the applicability of some or all of the requirements of these regulations for research of this type.

(b) Research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from these regulations unless the research is covered by other subparts of this part:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), if information taken from these sources is recorded in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(3) Research involving survey or interview procedures, except where all of the following conditions exist: (i) Responses are recorded in such a manner that the human subjects can be identified, directly or through identifiers linked to the subjects, (ii) the subject's responses, if they became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability, and (iii) the research deals with sensitive aspects of the subject's own behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol. All research involving survey or interview procedures is exempt, without exception, when the respondents are elected or appointed public officials or candidates for public office.

(4) Research involving the observation (including observation by participants) of public behavior, except where all of the following conditions exist: (i) Observations are recorded in such a

manner that the human subjects can be identified, directly or through identifiers linked to the subjects, (ii) the observations recorded about the individual, if they became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability, and (iii) the research deals with sensitive aspects of the subject's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

(5) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(c) The Secretary has final authority to determine whether a particular activity is covered by these regulations.

(d) The Secretary may require that specific research activities or classes of research activities conducted or funded by the Department, but not otherwise covered by these regulations, comply with some or all of these regulations.

(e) The Secretary may also waive applicability of these regulations to specific research activities or classes of research activities, otherwise covered by these regulations. Notices of these actions will be published in the Federal Register as they occur.

(f) No individual may receive Department funding for research covered by these regulations unless the individual is affiliated with or sponsored by an institution which assumes responsibility for the research under an assurance satisfying the requirements of this part, or the individual makes other arrangements with the Department.

(g) Compliance with these regulations will in no way render inapplicable pertinent federal, state, or local laws or regulations.

(h) Each subpart of these regulations contains a separate section describing to what the subpart applies. Research which is covered by more than one subpart shall comply with all applicable subparts.

§ 46.102 Definitions.

(a) "Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(b) "Department" or "HHS" means the Department of Health and Human Services.

(c) "Institution" means any public or private entity or agency (including federal, state, and other agencies).

(d) "Legally authorized representative" means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(e) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute "research" for purposes of these regulations, whether or not they are supported or funded under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

(f) "human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. "Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(h) "Certification" means the official notification by the institution to the Department in accordance with the requirements of this part that a research project or activity involving human subjects has been reviewed and approved by the Institutional Review Board (IRB) in accordance with the approved assurance on file at HHS. (Certification is required when the research is funded by the Department and not otherwise exempt in accordance with § 46.101(b)).

§ 46.103 Assurances.

(a) Each institution engaged in research covered by these regulations shall provide written assurance satisfactory to the Secretary that it will comply with the requirements set forth in these regulations.

(b) The Department will conduct or fund research covered by these regulations only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the Secretary that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. This assurance shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of source of funding. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of these regulations applicable to Department-funded research and is not applicable to any research in an exempt category listed in § 46.101.

(2) Designation of one or more IRBs established in accordance with the requirements of this subpart, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the Secretary. [1]

[1] Reports should be filed with the Office for Protection from Research Risks, National Institutes of Health, Department of Health and Human Services, Bethesda, Maryland 20205.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; (iii) for insuring prompt reporting to the IRB of proposed changes in a research activity, and for insuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the subject; and (iv) for insuring prompt reporting to the IRB and to the Secretary [1] of unanticipated problems involving risks to subjects or others.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by these regulations, and shall be filed in such form and manner as the Secretary may prescribe.

(d) The Secretary will evaluate all assurances submitted in accordance with these regulations through such officers and employees of the Department and such experts or consultants engaged for this purpose as the Secretary determines to be appropriate. The Secretary's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the Secretary may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The Secretary may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Within 60 days after the date of submission to HHS of an application or proposal, an institution with an approved assurance covering the proposed research shall certify that the application or proposal has been reviewed and approved by the IRB. Other institutions shall certify that the application or proposal has been approved by the IRB within 30 days after receipt of a request for such a certification from the Department. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

[1] Reports should be filed with the Office for Protection from Research Risks, National Institutes of Health, Department of Health and Human Services, Bethesda, Maryland 20205.

§ 46.104 [Reserved]

§ 46.105 [Reserved]

§ 46.106 [Reserved]

§ 46.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members' backgrounds including consideration of the racial and cultural backgrounds of members and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, including but not limited to subjects covered by other subparts of this part, the IRB shall include one or more individuals who are primarily concerned with the welfare of these subjects.

(b) No IRB may consist entirely or men or entirely of women, or entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in nonscientific areas; for example: lawyers, ethicists, members of the clergy.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participating in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ 46.108 IRB functions and operations.

In order to fulfill the requirements of these regulations each IRB shall:

(a) Follow written procedures as provided in § 46.103(b)(4).

(b) Except when an expedited review procedure is used (see § 46.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

(c) Be responsible for reporting to the appropriate institutional officials and the Secretary any serious or continuing noncompliance by investigators with the requirements and determinations of the IRB.

§ 46.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by these regulations.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 46.116. The IRB may require that information, in addition to that specifically mentioned in § 46.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § 46.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by these regulations at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

§ 46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary has established, and published in the Federal Register, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate, through periodic republication in the Federal Register.

(b) An IRB may review some or all of the research appearing on the list through an expedited review procedure, if the research involves no more than minimal risk. The IRB may also use the expedited review procedure to review minor changes in previously approved research during the period for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § 46.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The Secretary may restrict, suspend, or terminate an institution's or IRB's use of the expedited review procedure when necessary to protect the rights or welfare of subjects.

§ 46.111 Criteria for IRB approval of research.

(a) In order to approve research covered by these regulations the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 46.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § 46.117.

(6) Where appropriate, the research plan makes adequate provision for monitoring the data collected to insure the safety of subjects.

(7) Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) Where some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as persons with acute or severe physical or mental illness, or persons who are economically or educationally disadvantaged, appropriate additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ 46.112 Review by institution.

Research covered by these regulations that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ 46.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the Secretary.

§ 46.114 Cooperative research.

Cooperative research projects are those projects, normally supported through grants, contracts, or similar arrangements, which involve institutions in addition to the grantee or prime contractor (such as a contractor with the grantee, or a subcontractor with the prime contractor). In such instances, the grantee or prime contractor remains responsible to the Department for safeguarding the rights and welfare of human subjects. Also, when cooperating institutions conduct some or all of the research involving some or all of these subjects, each cooperating institution shall comply with these regulations as though it received funds for its participation in the project directly from the Department, except that in complying with these regulations institutions may use joint review, reliance upon the review of another qualified IRB, or similar arrangements aimed at avoidance of duplication of effort.

§ 46.115 IRB records.

(a) An institution, or where appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members as required by § 46.103(b)(3).

(6) Written procedures for the IRB as required by § 46.103(b)(4).

(7) Statements of significant new findings provided to subjects, as rquired by § 46.116(b)(5).

(b) The records required by this regulation shall be retained for at least 3 years after completion of the research, and the records shall be accessible for inspection and copying by authorized representatives of the Department at reasonable times and in a reasonable manner.

§ 46.116 General requirements for informed consent.

Except as provided elsewhere in this or other subparts, no investigator may involve a human being as a subject in

research covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research is to be conducted for the purpose of demonstrating or evaluating: (i) Federal, state, or local benefit or service programs which are not themselves research programs, (ii) procedures for obtaining benefits or services under these programs, or (iii) possible changes in or alternatives to these programs or procedures; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in these regulations are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in these regulations is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

§ 46.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § 46.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A "short form" written consent document stating that the elements of informed consent required by § 46.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the "short form."

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from

a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases where the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

§ 46.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to the Department with the knowledge that subjects may be involved within the period of funding, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants (including bloc grants) where selection of specific projects is the institution's responsibility; research training grants where the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research described in § 46.101(b), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in these regulations, and certification submitted to the Department.

§ 46.119 Research undertaken without the intention of involving human subjects.

In the event research (conducted or funded by the Department) is undertaken without the intention of involving human subjects, but it is later proposed to use human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in these regulations, a certification submitted to the Department, and final approval given to the proposed change by the Department.

46.120 Evaluation and disposition of applications and proposals.

(a) The Secretary will evaluate all applications and proposals involving human subjects submitted to the Department through such officers and employees of the Department and such experts and consultants as the Secretary determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the proposed research to the subjects and others, and the importance of the knowledge to be gained.

(b) On the basis of this evaluation, the Secretary may approve or disapprove the application or proposal, or enter into negotations to develop an approvable one.

§ 46.121 Investigational new drug or device 30-day delay requirement.

When an institution is required to prepare or to submit a certification with an application or proposal under these regulations, and the application or proposal involves an investigational new drug (within the meaning of 21 U.S.C. 355(i) or 357(d)) or a significant risk device (as defined in 21 CFR 812.3(m)), the institution shall identify the drug or device in the certification. The institution shall also state whether the 30-day interval required for investigational new drugs by 21 CFR 312.1(a) and for significant risk devices by 21 CFR 812.30 has elapsed, or whether the Food and Drug Administration has waived that requirement. If the 30-day interval has expired, the institution shall state whether the Food and Drug Administration has requested that the sponsor continue to withhold or restrict the use of the drug or device in human subjects. If the 30-day interval has not expired, and a waiver has not been received, the institution shall send a statement to the Department upon expiration of the interval. The Department will not consider a certification acceptable until the institution has submitted a statement that the 30-day interval has elapsed, and the Food and Drug Administration has not requested it to limit the use of the drug or device, or that the Food and Drug Administration has waived the 30-day interval.

§ 46.122 Use of Federal funds.

Federal funds administered by the Department may not be expended for research involving human subjects unless the requirements of these regulations, including all subparts of these regulations, have been satisfied.

§ 46.123 Early termination of research funding; evaluation of subsequent applications and proposals.

(a) The Secretary may require that Department funding for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the Secretary finds an institution has materially failed to comply with the terms of these regulations.

(b) In making decisions about funding applications or proposals covered by these regulations the Secretary may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person who would direct the scientific and technical aspects of an activity has in the judgment of the Secretary materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not Department funds were involved).

§ 46.124 Conditions.

With respect to any research project or any class of research projects the Secretary may impose additional conditions prior to or at the time of funding when in the Secretary's judgment additional conditions are necessary for the protection of human subjects.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Research Activities Which May Be Reviewed Through Expedited Review Procedures Set Forth in HHS Regulations for Protection of Human Research Subjects

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice contains a list of research activities which Institutional Review Boards may review through the expedited review procedures set forth in HHS regulations for the protection of human subjects.

EFFECTIVE DATE: This Notice shall become effective on July 27, 1981. Institutions currently conducting or supporting research in accord with General Assurances negotiated with the Department of Health and Human Services (formerly HEW) may continue to do so in accord with conditions of their General Assurance. However these Institutions are permitted and encouraged to apply § 46.110 and the list of research categories, as soon as feasible. They need not wait for the effective date or the negotiation of a new assurance to operate under the new sections cited above. Institutions conducting or supporting research in accord with a Special Assurance negotiated with the Department, shall continue to do so until such time as the assurance terminates.

FOR FURTHER INFORMATION CONTACT: F. William Dommel, Jr., J.D., Assistant Director, office for Protection from Research Risks, National Institutes of Health, 5333 Westbard Avenue, Room 3A18, Bethesda, Maryland 20205, telephone: (301) 496-7163.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register the Secretary is publishing final regulations relating to the protection of human subjects in research. The regulations amend Subpart A of 45 CFR Part 46.

Section 46.110 of the new final regulations provides that: "The Secretary will publish in the Federal Register a list of categories of research activities, involving no more than minimal risk, that may be reviewed by the Institutional Review Board, through an expedited review procedure * * *" This notice is published in accordance with § 46.110.

Research activities involving no more than minimal risk and in which the only involvement of human subjects will be in one or more of the following categories (carried out through standard methods) may be reviewed by the Institutional Review Board through the expedited review procedure authorized in § 46.110 of 45 CFR Part 46.

(1) Collection of: hair and nail clippings, in a nondisfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction.

(2) Collection of excreta and external secretions including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor.

(3) Recording of data from subjects 18 years of age or older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects 18 years of age or older and who are in good health and not pregnant.

(5) Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(6) Voice recordings made for research purposes such as investigations of speech defects.

(7) Moderate exercise by healthy volunteers.

(8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

(9) Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to subjects.

(10) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

Dated: January 14, 1981.

Julius B. Richmond,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 81-2569 Filed 1-23-81; 8:45 am]

BILLING CODE 4110-08-M

federal register

Monday
January 26, 1981

Part XI

Environmental Protection Agency

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[SWH-FRC 1725-5]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environemental Protection Agency.

ACTION: Suspension of annual report requirement.

SUMMARY: The Environmental Protection Agency (EPA) is today revising its hazardous waste regulations to suspend entirely the annual report requirement for calendar year 1980 for hazardous waste generators and owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA is taking this action because the Agency sees little practical value in requiring the regulated community to file the annual report for 1980 at a time when, because of the tremendous workload at the beginning of the hazardous waste regulatory program, the Agency will not be able to make good use of the report data. This action will relieve the regulated community of the annual reporting requirement contained in the regulations for calendar year 1980 and will also allow both EPA and the regulated community ample time in which to prepare for submission of the 1981 annual report.

DATE: Effective Date: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Jeffrey Goodman, Director, Analysis Branch, Office of Management, Information and Analysis Division (WH-562), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9180.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, EPA promulgated regulations on May 19, 1980, establishing a comprehensive regulatory program for the management and control of hazardous wastes (see 40 CFR Parts 260-265 and 122-124, 45 FR 33066). These regulations, which became effective on November 19, 1980, establish standards for hazardous waste generators, transporters, and treatment, storage and disposal facilities, including, among other things, a manifest system for tracking wastes and certain recordkeeping and reporting requirements. As a part of the regulations, generators of hazardous waste (see 40 CFR 262.41, 45 FR 33144) and owners and operators of hazardous waste treatment, storage, and disposal facilities (see 40 CFR 264.75, 45 FR 33227 and 40 CFR 265.75, 45 FR 33239) are required to prepare an annual report on their activities and submit it to the EPA Regional Administrator by March 1 of the following year. Annual report forms are provided in the appendices to the appropriate parts of the regulations (see 45 FR 33145, 45 FR 33254).

II. Reason for Amendments

EPA is suspending the annual report requirements for 1980 for one major reason. The Agency will not be prepared by March 1 of this year to adequately collate, analyze, and make use of the data from these reports, given the heavy workload the Agency is currently experiencing in the initial phase of this regulatory program. This workload includes, among other things, processing some 14,700 Part A applications for permits, amending and finalizing existing Phase I regulations, and promulgating Phase II regulations. The Agency, therefore, believes that requiring the regulated community to bear the significant cost of reporting when the Agency cannot make good use of the reports is clearly unwarranted.

Furthermore, EPA believes that today's action is fully consistent with the statutory reporting requirements contained in RCRA. Sections 3002(6) and 3004(2) both give the Administrator broad discretion in setting reporting requirements for generators and owners and operators of hazardous waste facilities. In EPA's opinion, today's suspension of the 1980 annual report requirement, for the reason cited above, is within that administrative discretion.

It should be noted that today's action does not in any way relieve the regulated community of its recordkeeping (i.e., manifests, operating records) and other reporting responsibilities, as contained in the hazardous waste regulations. In fact, EPA intends to examine these 1980 records during site inspections in the coming year. Also, today's action does not in any way modify the annual reporting requirements for calendar year 1981.

III. Suspension

To suspend the annual report requirement for 1980 EPA is today taking the following actions:

(1) 40 CFR 262.41 is being suspended for calendar year 1980.

(2) 40 CFR 264.75 is being suspended for calendar year 1980.

(3) 40 CFR 265.75 is being suspended for calendar year 1980.

As indicated above, these actions do not suspend the other reporting and recordkeeping requirements contained in the regulations. For hazardous waste generators the requirements that remain in effect include the recordkeeping, exception reporting, and additional reporting requirements set out in Subpart D of Part 262. For treatment, storage, and disposal facilities the requirements that remain in effect include the manifest system, operating record, disposition of records, unmanifested waste reporting, and additional reporting requirements contained in Subpart E of Parts 264 and 265. Because these requirements remain in effect during this six-week period, the specified records must be maintained.

IV. Effective Date

EPA is promulgating this suspension in final form with an effective date of January 26, 1981. The Agency has determined under Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), that there is good cause for promulgating this suspension without prior notice and comment. The current hazardous waste regulations require annual reports for 1980, imposing a burden on the regulated community for which EPA sees little practical value. Having decided to suspend the annual report requirement for 1980, EPA believes it is essential to take this action before the regulated community will have to begin preparing and submitting the annual report.

Section 3010(b) of RCRA requires that revisions to the hazardous waste regulations take effect six months after their promulgation. The purpose of this statutory requirement is to allow the regulated community sufficient lead time to prepare to comply with major new regulatory requirements. Delaying the effective date of his action which reduces existing regulatory requirements is not consistent with carrying out this objective. Furthermore, the Agency believes that an effective date six months after promulgation would defeat the very purpose of the action. EPA is therefore making the suspension effective on January 26, 1981.

Dated: January 19, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-2530 Filed 1-23-81; 8:45 am]

BILLING CODE 6560-30-M

Federal Register

Monday
January 26, 1981

Part XII

Department of Energy

Office of the Secretary

Emergency Building Temperature Restrictions; Amendment of Regulations

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 490

[Docket No. CAS-RM-79-110]

Emergency Building Temperature Restrictions; Amendment of Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: Under the authority of the Energy Policy and Conservation Act (42 U.S.C. 6201) (EPCA) as amended, Executive Order 11912 (41 FR 15825, April 13, 1976) and the "Standby Conservation Plan No. 2: Emergency Building Temperature Restrictions" (44 FR 12906, March 8, 1979), the Department of Energy is amending the Emergency Building Temperature Restrictions (EBTR) regulations (44 FR 39354, July 5, 1979) which became effective on July 16, 1979 (44 FR 40629, July 12, 1979) and were extended on April 15, 1980 (45 FR 26019, April 17, 1980). These amendments were published as notice of proposed rulemaking on May 27, 1980 (45 FR 35788).

The regulations place restrictions on space temperatures for heating and cooling, and on hot water temperatures in commercial, industrial, and other nonresidential buildings to reduce energy consumption.

These amended regulations are intended to improve the operation of the program based on experiences to date. The specific changes and rationale are set forth in the supplementary information section.

EFFECTIVE DATE: These amended regulations become effective January 26, 1981.

FOR FURTHER INFORMATION CONTACT: W. Lorn Harvey, Deputy Director, Office of Emergency Conservation Programs, Conservation and Solar Energy, 1000 Independence Avenue SW., Room GE-004A, Washington, D.C. 20585. Telephone (202) 252-4966. Edward H. Pulliam, Office of the General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 1E-258, Washington, D.C. 20585. Telephone (202) 252-9510. Emergency Conservation Service Hotline, 1-(800)-424-9122 from Continental United States; 1-(800)-424-9088 from Alaska, Hawaii, Puerto Rico, and the Virgin Islands; (202)-252-4950 from metropolitan Washington, D.C.

SUPPLEMENTARY INFORMATION:

Contents

I. Background of EBTR Final Regulations

Standby Federal Conservation Plan No. 2, Emergency Building Temperature Restrictions (the Plan) was submitted to and approved by Congress pursuant to Section 201 of the Energy Policy and Conservation Act (42 U.S.C. 6261), which authorized the President to develop energy conservation contingency plans. Emergency Building Temperature Restrictions (EBTR) final regulations (the regulations) were published by the Department of Energy (DOE) on July 5, 1979 (44 FR 39354) and became effective by Presidential Proclamation on July 16, 1979 (44 FR 40629, July 12, 1979 and 44 FR 41205, July 16, 1979). The President issued a Proclamation on April 15, 1980 (45 FR 26019, April 17, 1980) continuing EBTR in effect until January 16, 1981, unless earlier rescinded.

II. Background and Brief Description of Amendments

The amendments included in this final rulemaking were published as a notice of proposed rulemaking on May 27, 1980 (45 FR 35788). They have been developed based upon more than nine months' experience in operating the nation's first peace time emergency conservation program, and in response to public comment received on the termperature restrictions throughout the effective period of the regulations, including over 61,000 telephone calls on the Emergency Conservation Service Hotline, 400,000 pieces of mail, and comment from trade and professional organizations, as well as from Federal, State, and local agencies. The proposed amendments have been revised in this final rule to incorporate suggestions received during the public comment period (May 27-June 26, 1980 and at a public hearing on these amendments held on June 12, 1980, in Washington, D.C.

The proposed amendments expanded on and presented new definitions of several terms to clarify the coverage of the EBTR and complement references to new refinements in the regulations. Of particular note are the addition of descriptions of "waste energy" and "intermediate season," and the introduction of the new term "work station."

Section 490.12, covering HVAC systems with a capability for simultaneous heating and cooling, was modified to simplify the choices of building owner/operators in complying with the temperature restrictions. Section 490.12(c)(3) further clarified the use of reheat. The problem of increased energy demand when lowering heat pump settings during unoccupied periods was resolved by raising the setback temperature in § 490.14. Several new sections supported the requirement that HVAC systems and control devices be maintained in proper balance and repair, to supplement existing §§ 490.13(a) and (b) and 490.23(a) which require "reasonable tolerances of accuracy." Relocating temperature control devices to circumvent the intent of the regulations was also prohibited.

Also proposed were refinements to temperature measurement techniques, including a proposed "breathing level" measurement height, and an allowance for adjustments based on conditions at representative work stations. The latter was complemented by an amendment prohibiting use of an auxiliary heater to raise the temperature above 65° F. at a work station.

The regulations add two new general exemptions to protect the health and safety of persons covererd by the regulations. Both allow temperatures at variance with the regulations when work or school procedures require an individual to wear special or protective clothing or to shower.

The proposed amendments also included a partial exemption for senior citizen centers, in accordance with a previous regulatory amendment published in the Federal Register (45 FR 13050, February 28, 1980).

Section 490.34 was elaborated to encourage building operators to comply with exemptions or exceptions "without undue delay."

Finally, DOE proposed, but has determined it will not adopt, an

alternate plan amendment as a self-certifying partial exemption. This exemption would have allowed building owners and operators to maintain tempreatures of 68° F. when heating and 74° F. when cooling provided they implemented collateral measures to reduce energy consumption which together would save a comparable amount of energy as would strict compliance with the basic temperature restrictions, i.e., 65° F. and 78° F., set forth in the regulations.

III. Summary of Public Comments

Nine oral presentations and 73 written comments were made on behalf of a broad range of interests, including private industry, educational and cultural institutions, trade and professional associations, building owners and operators, and various units of Federal, State, and local government.

None of the nine who testified at the public hearing in Washington, D.C., on June 12, 1980, seriously disagreed with EBTR in principle or criticized the operation of the program during its first phase, and none suggested that it be discontinued. Mr. Chuck Clinton, director of the District of Columbia Energy Unit, said: "Basically, we think that the program is a solid one, that it fits in beautifully with all the other energy conservation and renewable resource programs that we are running in the District."

From the State of Montana, Mr. Joseph Ziegler, energy coordinator, made an unscheduled presentation at the public hearing in Washington, D.C. He argued strongly that the proposed alternate plan exemption be rejected. He declared: "We feel that the alternative plan suggests a negativeness to EBTR. The word 'emergency' has no meaning anymore." When asked if there was opposition to the EBTR program in Montana, where he had conducted over 800 inspections, he replied: "No, non whatsoever. We believe in EBTR with all our hearts."

The other seven speakers at the public hearing represented trade associations or corporations, and their views are reported below.

Throughout the first nine months of the EBTR program, the public's reception was surprisingly positive. Most of the letters and telephone calls received were serious requests for advice on compliance. Criticisms were almost unanimously tempered and reasoned. Building owners and operators who objected to the regulations almost always explained how they were conserving energy in other ways. While citizens occasionally may have been disturbed over perceived discomfort and inconvenience, on the whole, the EBTR program brought out an overwhelming demonstration of patriotism and willingness to share the burden of the Nation's need to conserve energy. Many of the complaints against buildings thought not to be in compliance were from citizens who said they felt it was unfair that most building owners/operators complied while others tried to shirk their responsibility.

The great majority of comment received on the proposed amendments was wholly or in part directed at the proposed alternate plan exemption. The remainder of the responses addressed several other parts of the proposed amendments, suggested new changes, or commented on the current temperature restrictions.

Businesses

Twenty comments were received from businesses and industrial firms. By and large, commenters felt that the EBTR regulations, with proposed amendments, would be workable for their companies, and that the temperature levels had been, and would continue to be, acceptable to their employees and customers. About half of those commenting favored the proposed alternate plan amendment in principle.

Only two negative comments were received. One came from Perkin-Elmer Computer Operations, Oceanport, New Jersey, which called EBTR "totally impractical for the workplace." The writer felt that the regulations had contributed to sickness, absenteeism, and losses in productivity, but offered no definitive documentation to support these claims, and he did not indicate that an exemption had been requested. He felt that the alternate plan exemption would be welcome. The Trane Company of La Crosse, Wisconsin, was of the opinion that "government regulations to control the temperature setting in buildings as a way of conserving energy are not necessary."

Several corporations, including International Business Machines (IBM) and Meredith Corporation of Des Moines, Iowa, endorsed the proposed alternate plan amendment without extensive comment. Two others, Southwestern Bell Telephone Company and Parker-Hannifin Corporation, commended the alternate plan proposal for the "flexibility" it offers to building owners and operators in choosing the methods of compliance. AMAX Coal Company expressed the opinion that with such alternate plans, as much energy, or more, might be saved as would compliance with the unamended regulations.

Among those favoring the alternate plan concept, the greatest concern was expressed about equity to those building owners and operators who had instituted significant energy conservation programs prior to the institution of EBTR in mid-1979. They felt severe constraints on their ability to "squeeze" more savings out of buildings which had been made energy efficient prior to the EBTR regulations. The Gillette Company's St. Paul Manufacturing Facility, for example, reported a total energy reduction of 44 percent during 1979 over a base year of 1973, when its energy conservation program was launched. Taylor Drug Stores, Louisville, Kentucky, detailed many conservation measures, including relamping the entire chain and offices with energy saving fluorescent lamps. Taylor, consequently, asked what the base year would be—before 1977 when it took most of its measures, or after—and how EBTR would affect new stores opened in 1979–1980. Marathon Oil Company of Findlay, Ohio, protested that an "alternate plan exemption is unfair to those building owners or operators who voluntarily instituted energy conservation measures prior to the implementation of this emergency plan." The Firestone Tire and Rubber Company of Akron also expressed concern that a building operator who reduced lighting, added storm windows, and took other conservation steps before 1979 would now be required to take other, more capital-intensive measures to achieve equivalent energy savings. Firestone recommended that a building operator be allowed to select any base year.

Eastman Kodak supported the concept of an alternate plan exemption, and made an innovative suggestion, namely, that the savings reported by industrial firms under the DOE Energy Efficiency Improvement Report program be accepted by the Department as proof of savings under the EBTR program, as well. Such an option would be available only to those major industrial users which already are participating in the reporting program. Some other method of documenting savings would have to be used by others. Kodak also urged that the words "covered building located within a geographically contiguous property" be added, so that savings could be measured for an industrial complex rather than building-by-building, as at present.

The General Electric Company, Lighting Business Group, Cleveland, Ohio, testified at the public hearing in support of the concept of a lighting wattage reduction qualifying for the

partial exemption. The spokesman urged that the words "lighting reduction" in the proposed rule be changed to "lighting wattage reduction."

Reheat is prohibited, in the original regulations and in these final regulations, "except in those cases where a licensed professional engineer certifies that adequate temperature control cannot be achieved without the use of reheat." Kodak proposed that the words "or humidity" be inserted to make the provision read:

"* * * engineer certifies that adequate temperature or humidity control cannot be achieved * * *". Kodak also proposed that a higher temperature be allowed under certain circumstances at the work station, e.g., where a higher temperature was needed to counteract the radiant cooling effect of low wintertime wall temperatures. The Trane Company recommended that the use of reheat be allowed without forcing the owner to hire a consulting engineer for the purpose of certifying its necessity.

Three companies commented on the proposed general exemption: "With respect to restrictions on heating only, to protect the health of persons in workplace or school shower and changing rooms where showers are considered a required part of customary work or school procedure."

AMAX Coal Company fully supported this exemption, but protested the adjective "required," as did DuPont. AMAX said that it is company policy to encourage showers and to provide showering facilities; "However, it is not our practice to *require* that workers take such showers * * * to the best of our knowledge, showering has never been a required procedure in coal mining." DuPont Chemical Company "requires" or "strongly recommends" that approximately 7,000 of its 100,000 employees change clothes and shower before leaving the workplace. The Upjohn Company, Kalamazoo, Michigan, commented that it has found "a special hardship" for its employees in regard to temperatures in the locker and shower rooms.

Two other corporations, each with a successful energy management program, testified at the public hearing that EBTR was an integral part of their ongoing energy conservation efforts, and both urged DOE not to publish the alternate plan amendment as a final rule.

American Telephone and Telegraph Company's spokesman said, "The Bell System is opposed to the amendment for we feel that it weakens existing energy conservation efforts." He said that AT&T has adhered, for over three years, to guidelines identical to the Emergency Building Temperature Restrictions. "In the interest of continued and greater conservation," he said, "the Bell System encourages the continuation of these regulations without the proposed weakening amendment so as to keep alive the vital need to conserve energy."

AT&T said that the alternate means are actions which any building owner or operator should take because they "are good common sense approaches * * * for the business taking them." In addition, he pointed out that exemptions and exceptions are available to meet particular needs. He concluded, "However, we feel it is wrong to grant a blanket exemption because other conservation actions are implemented."

The Bell System owns and operates some 28,000 buildings. Since 1973, it claims to have reduced building systems' energy per square foot of floor space by 41 percent. In 1979 the company used seven percent less energy than in 1973, saving the equivalent of 23 million barrels of oil, and avoiding energy costs of over $800 million.

Pan American World Airways has had an energy management program at its John F. Kennedy International Airport terminal in New York since 1974. Following implementation of the Emergency Building Temperature Restrictions on July 16, 1979, the manager for utility control for building services at that terminal instituted not only the restrictions, but a whole new strategy of heating and air-conditioning, as well. "For example," he testified, "it was found that during the spring and fall days, when the 6 a.m. temperature is about 55 degrees, and the peak afternoon temperature is 70, we could ventilate a building with outside air without any treatment. Formerly, we would heat the 55 degree air and cool the 70 degree air at considerable expenditure of energy. Now, we are able to close the hot and chilled water control valves, and we have gone as long as an entire week without expending one single BTU."

During the 10 months of the EBTR program to the time of the hearings, Pan Am had reduced the number of BTUs required to heat and cool the terminal by 33 percent, compared to the same period in 1978–1979, at a savings of $300,000. At the maintenance base, savings of 30 percent and $425,000 were attributed to EBTR. Those savings were made despite a five percent rise in the total degree days for the later period.

"Pan Am's experience has been that almost all workers are accepting 65/78 degrees Fahrenheit," the spokesman said. "They are wearing more clothes in winter; and they are conditioning themselves to the warmer and cooler temperatures. In a number of instances they have taken the example to use these settings in their homes as well."

Pan Am strongly recommended, "with the support of the Air Transport Association that the Emergency Building Temperature Restrictions be continued unchanged," i.e., that the alternate plan amendment not be adopted.

Trade Associations

Comments were received from fifteen trade associations (including a joint comment of the American Iron and Steel Institute and the General Motors Corporation) and nine professional associations. Their comments are summarized below.

Several of the trade associations submitting comments addressed the EBTR program in general, both in opposition and in favor. Two commenters, American Iron and Steel Institute and General Motors Corporation, supported the amended regulations generally, but did not support mandatory Federal conservation programs, feeling that "the market place has achieved, and will continue to achieve, the necessary energy use reductions without undue regulatory complications and administrative burdens."

Of the trade associations commenting, the Building Owners and Managers Association International (BOMA) and the National Restaurant Association (NRA), were particularly supportive of the alternate plan provisions in the proposed rulemaking. Both of these organizations argued that the main value of EBTR is not so much in the energy savings specifically attributable to temperature controls but rather in the "consciousness raising" of the need for energy conservation which the program has fostered.

BOMA offered a detailed plan, which in conjunction with the 68°/74°F. limitations, requires savings in other areas of building operation, many of which are claimed to result in energy use reduction on a permanent basis (e.g., investments in facilities and equipment which incorporate new energy-saving technologies) as well as through greatly improved maintenance. BOMA also raised concerns about the current EBTR program not recognizing energy savings which could occur through means other than temperature restrictions and therefore saw the alternate plan feature as a valuable addition to the EBTR program. BOMA found no great difficulty in proving compliance under their alternate plan approach.

BOMA also suggested selecting a base year for comparison purposes, against which to assess energy savings which

came prior to the implementation of EBTR, that would allow total progress to be shown during the EBTR program.

NRA viewed the alternate plan provision as a means for avoiding uncomfortable temperature requirements while still accomplishing an equal amount of energy conservation. NRA is particularly interested in this approach since it believes that restaurants depend on comfort as a major factor in bringing in customers to its member establishments. NRA contrasted the restaurateur's situation with that of a company that is paying people to work in a facility where temperature restrictions apply, and calls this difference an important distinction.

NRA further pointed out that while only 30 percent of total restaurant energy use is for room temperature control, 70 percent is used for processes, i.e., energy used in preparing food. The proposed NRA alternate plan recognizes this ratio, and, while requesting a minimum heating temperature of 70°F., expects to save at least the equivalent amount of energy from improved process energy efficiency. NRA's maintenance plan, submitted in detail, requires a record of monthly inspections which will encourage energy management actions to be taken in the process side of the restaurant's business. NRA urges that this record is satisfactory evidence that an equivalent amount of energy is being saved and feels it should be acceptable proof in lieu of fuel and utility bill records, since NRA indicated that the latter may not always be available.

NRA argued for the 70° F. heating minimum from two points of view. First, 70° F. is represented as a minimum temperature for comfort where people sit and relax. Second, the restaurant industry serves large numbers of senior citizens every day and NRA notes that the proposed rulemaking specifically provides that facilities dedicated to senior citizens be exempted from the 68° F. heating maximum and instead be adjusted to 70° F.

NRA further recommended that to give credit for previous conservation efforts companies having long-standing conservation programs be allowed to use their records in place of fuel and utility bills as evidence of compliance.

NRA acknowledged that fast food restaurants are probably not interested in the alternate plan option since customers are inside their buildings for a minimum amount of time and further, that the competition in fast food business necessitates energy conservation.

The comments of three other associations, as well as those of six individual restaurateurs, supported the idea of conserving energy but felt that it should be done with programs tailored to and by the industry involved rather than a blanket standard such as the EBTR program provides. They praised the alternate plan approach and made most of the points raised above.

Some other specific comments received on the proposed alternate plan exemption by associations include:

Retailers—Association of General Merchandise Chains, National Retail Merchants Association, American Retail Federation, National Association of Chain Drug Stores—supported the proposed alternate plan exemption because it adds flexibility to their efforts to conserve energy.

The American Iron and Steel Institute and General Motors also supported the alternate plan exemption, stating that "energy conservation measures should, to the maximum extent possible, provide industry with the flexibility to reduce its energy usage in the ways best suited to its own efficient operation." They felt that this provision will result in comparable energy savings while reducing the "hardship of this program on the public."

The Air Transport Association (ATA) opposed the alternate plan amendment. The ATA suggested that "significant energy saving would be jeopardized by the adoption of the proposed amendment." The ATA also submitted a 173 page document, "Energy Evaluation and Management Manual for Airports," by Harley Ellington Pierce Yee Associates (revised April 18, 1980), and noted that the procedures outlined in the manual were implemented at several airports throughout the country with "resulting energy savings in the 30–40 percent range."

The American Bakers Association (ABA) and the Food Marketing Institute, joined by several of the retail trade associations, opposed requiring buildings to post new compliance certificates. The ABA commented that "DOE should issue amendment stickers and forms to be required *only* of those facilities desiring to take advantage of the new 'alternative plan' amendments."

The American Iron and Steel Institute (AISI) and General Motors support workplace and school shower and changing room exemptions and they note that this exemption will "in some circumstances" permit industry "to comply with labor contracts and the various Federal, State and local health and safety regulations." They also support the exemption to protect the health of individuals required to wear special and protective clothing. They noted, however, that in some instances employers may require special clothing that is not required by security, safety, or health *codes,* and therefore suggested deleting the word "codes" and inserting the word "reasons" in Section 490.31. AISI and General Motors suggested that DOE has exceeded its statutory authority in Section 490.34 by requiring building owner/operators to comply with exemptions or granted exceptions. They stated that DOE has no statutory authority to go "beyond the granting of exemptions to grant affirmative relief requiring maintenance of certain higher/lower temperatures." They asserted that this authority lies with state or local authorities.

The American Hospital Association (AHA) opposed redefining "hospital and health care facility" to include all doctor's and dentist's offices within the scope of the regulations. AHA recommended that "a blanket exemption be given to all physicians' offices with examination and treatment rooms wherever they are located * * * because patient health, safety, and welfare could be threatened by low heating temperatures mandated by the regulations."

The National Club Association supports the senior citizen exemption, but suggests that the exemption be valid for the entire day in the location that a senior citizen activity is taking place. The association also urges that shower and changing facilities in all schools and clubs, both public and private, be exempted from the regulations.

The Food Marketing Institute suggested modification of the language pertaining to hot water temperatures to permit exemptions in buildings where hot water temperatures "higher than 105 degrees F. are needed for cleaning and sanitizing food contact surfaces of equipment and utensils."

Professional Associations

The National Association of Counties Research, Inc., pointed out that EBTR has been a valuable energy saving tool, and gave two examples—Genessee County, Michigan, and Broward County, Florida—where 25–30 percent energy savings have been realized in county office buildings. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) commented that the EBTR approach should be used only where clearly necessary, and opposed making the restrictions permanent.

With regard to the EBTR regulations, ASHRAE noted, "While we do have some reservations about the long range and permanent effects of EBTR, ASHRAE endorses the proposed changes to the current regulations in the

Notice of Proposed Rule Making, dated May 27, 1980. Our Society has provided DOE with suggestions for technical improvements to the regulations and we are pleased to note that many of these suggestions have been incorporated in the proposed rule. All of the proposed rule changes are technically correct * * * ASHRAE offers its continuing support to make the EBTR program more effective. Our Technical Committee T.C. 9.6 stands ready to provide DOE with additional comments, and we offer our expertise on future revisions to the program."

In addition to its specific comments, ASHRAE also submitted copies of many technical papers and articles on the EBTR program and on indoor comfort that have appeared recently in ASHRAE publications.

With respect to the proposed alternate plan exemption ASHRAE said that it would make the program more "equitable and efficient." The American Consulting Engineers Council and the Associated Air Balance Council also supported the alternate plan exemption.

The following specific comments were provided by professional associations:

Donald G. Carter, testifying on behalf of the American Consulting Engineers Council, indicated specific support for two other aspects of the proposed revisions: The reliance on a "Vernon-type globe thermometer" to take temperature readings as an alternative to calculating an adjusted dry-bulb temperature for a particular room or condition, and the addition of a definition for "intermediate season" to take into consideration those times when combined heating and cooling loads are required during the same day. He also was concerned, in the proposed alternate plan exemption, that in some large buildings, owner/operators and tenants may have disagreements about the best measures to take as an alternate plan, and suggested that an appeals process be implemented.

The Associated Air Balance Council (AABC) expressed concern about the wording of the amended § 490.17, which requires in paragraph (d) that "the HVAC distribution system is properly balanced in accordance with generally accepted industry practice." The AABC suggests that this balance be "in accordance with Associated Air Balance Council (AABC) National Standards," so the testing and balancing work will be performed by competent personnel.

The Nevada Classified School Employees Association suggested that the definition of "unoccupied period" be relaxed to exclude those periods when school custodial workers are performing non-routine maintenance.

The National Education Association (NEA) commended the proposed revision to the definition of "elementary school" and the additional language concerning heating exemptions for school showering and changing rooms. NEA suggested that this definition could be expanded further, to recognize new types of school facilities characterized by their "disconnected" construction. It also suggests that the regulations be amended to note that school showering and changing room exemptions include "secondary and postsecondary schools that require student use of the gym facilities."

The American Library Association, the Society of American Archivists, and the Association of Research Libraries all asked that the Exemption Information Form be revised to include libraries and archives as an example of institutions eligible for general exemption D, which deals with the protection of "materials essential to the operation of a business." They noted difficulties in communicating to local officials the importance of an exemption to protect archival materials.

Federal Agencies

The General Services Administration (GSA), the Department of Defense (DOD), and the U.S. Postal Service have responsibility for the large majority of all Federal buildings. As a result, the EBTR program office has maintained close liaison with these agencies, all of whom have executed the EBTR regulations with vigor. In response to the proposed rulemaking, comment was received from both GSA and DOD.

GSA did not endorse the alternate plan provision of the proposed rule. They felt instead that such a provision would be counterproductive and highly damaging to the achievement of national energy conservation and fuel usage goals. Further, they felt the provision would create confusion and prolong doubt about the seriousness of the energy crisis.

GSA suggested that if an alternate plan provision is needed for the private sector, perhaps a separate EBTR requirement might be developed for the Federal government. GSA felt the Federal government, in particular, should provide the role model for the country by being the recognized leader, through example, in conserving energy. GSA commented that existing temperature restrictions provide a reference level which building occupants are becoming accustomed to and are accepting as the norm. GSA felt that a liberalization in temperature levels would dissipate both the effort that has occurred and the consensus for the need to reduce energy consumption in buildings. GSA further suggested that "for individual buildings which are in untenable situations, specific requests for exemption be evaluated rather than a one-time significant change in temperature levels as proposed."

GSA felt the proposed alternate plan approach is inappropriate for the Federal Government in that (1) energy conservation savings were accomplished by capital investments based on a methodology of prioritized payback, (2) these investments had to compete with numerous other demands in the budget process, and (3) a relaxation of the temperatures because of implemented energy conservation measures would negate the savings that established the economic viability of the project.

The Department of Defense supported the alternative plan concept but noted several drawbacks:

There is no credit provided for retrofit activities which took place before the onset of the EBTR. This is particularly onerous since it penalizes building operators who took responsible action early;

Credit is authorized if corrective measures are being "instituted." This could easily offset any energy reduction gains, if construction were in progress for several months; and

The proposed rules do not speak to a methodology for determining energy savings. In point of fact, actual savings attributable exclusively to EBTR are extremely difficult to calculate.

DOD recommended the following changes respectively, to correct these deficiencies:

Authorize the 68/78 degree limits for buildings which have achieved documented performance standards at any time. Publish standards, such as 200,000 Btu/ft2/year or direct that criteria from the building energy performance standards (BEPS) be used;

Delete from § 490.36(a)(2) the words "or is instituting." Authorize alternate plan standards only when a percent reduction (e.g., 10 percent) of utility energy (in contrast to process energy) can be documented or building performance standards have been achieved;

Prohibit auxiliary electric resistance heaters when room temperature is 65 degrees or above since these heaters consume considerable energy;

Modify § 490.17 to preclude the "broom closet" technique for circumventing the intent of the EBTR. This occurs when the lowest temperature in winter and the highest temperature in summer is recorded in an obscure, unoccupied space, thereby

permitting the remainder of the building to be heated higher in winter or cooled to a lower temperature in summer. To correct this shortcoming, DOD recommended modifying the first sentence of § 490.18(a), to read "* * * or any other *regularly occupied* room controlled by the device."

States, Local Governments, School Districts

Energy officials from 11 States provided commentary on the proposed EBTR regulations, either through testimony or written comment. These included representatives from the States of Alabama, Arkansas, Colorado, Delaware, Hawaii, Massachusetts, Minnesota, Montana, New Hampshire, South Dakota, and Wisconsin. Comments were received from five municipalities, the District of Columbia; Houston, Texas; Manchester, New Hampshire; New York City; and Rockland City, New York. Comments were provided by two county governments, Wayne County, Michigan, and Erie County, New York, and by school districts in Los Alamos, New Mexico; Waco, Texas; and Peoria, Illinois.

The comments were precise, thoughtful, and well-informed. Since many of these units of government participated in the implementation of the EBTR during its first 9-month tenure, their comments were of particular value to DOE in coming to an appreciation of the administrative problems posed by the requirements of the EBTR regulations to date.

The vast majority of the commentary concentrated on the proposed alternate plan exemption. Most, such as the District of Columbia, made some gesture to "applaud DOE for its sensitivity to the serious concerns and problems that beset some business and building owners and operators," and noted that the proposed alternate plan would provide welcome flexibility in achieving the energy-saving objectives contemplated by the regulations. This view was ably summarized by the Erie County Department of Environment and Planning, which noted that the alternate plan is "especially welcome" as a "manifestation of a new spirit of flexibility not evident in the regulations which dominated Cycle I," and is "evidence of a recognition that energy conservation can be achieved most effectively by different measures in various regions and businesses, combined with a new emphasis on education rather than coercion."

Nonetheless, it must be said that acceptance of the proposed alternate plan exemption was highly qualified. Despite acceptance of the proposal as "fundamentally good" (New York City), practically all commenters qualified their support with a long listing of specific concerns touching on all aspects of administration, enforcement, and the validation and analysis of energy savings which would result. These are summarized in some detail below, together with the comments of those organizations which did not favor the alternate plan proposal.

Two States and two municipalities unequivocally rejected the proposed alternate plan exemption.

The City of Houston, exempted from the EBTR regulations because it is implementing an approved "comparable plan," noted that the proposed alternate plan exemption "is too liberal and takes the starch out of the EBTR, making it practically unenforceable." It noted, interestingly, that despite the fact that the Houston Plan offers an incentive clause which "authorizes application for a 1 degree variance for each 10 percent savings in energy," none of 20 such requests asked for reductions in the cooling level of 76 degrees, mandated by the Houston plan, to the 74 degree level proposed in the alternate plan exemption. Houston also pointed out that projected energy savings must be documented in advance of approval of any alternate approach.

The State of Hawaii recommended disapproval of the alternate plan proposal, noting that the self-certifying feature of the exemption would make it "impossible to determine compliance or non-compliance," and that "all exemptions that are taken must have written documentation to support their claim." In all cases, Hawaii recommended that a licensed professional engineer certify the calculations of savings projected, and suggested that the many variables affecting building use, such as new equipment, increased and varying occupancies, and differing working hours, would make it extremely difficult to document energy savings accurately. Unless this were done, the use of even the previous two years of utility and fuel consumption bills "would not be a valid base for comparison."

As noted above, the State of Montana asserted that the proposed alternate plan exemption would suggest "a negativeness to EBTR," and that the word "emergency" would no longer have any meaning. The psychological impact of the program would, it was felt, be "destroyed," and a very valuable outreach and educational effort diluted. In spite of the fact that Montana is a "tourist State" which has conducted over 800 inspections, it was noted that few people complained of "suffering," or that their business was adversely affected.

The response from the State of New Hampshire reflected the qualifications with which most States reacted to the alternate plan proposal. On the one hand, it felt that the alternate plan as described would be "unworkable and unenforceable," implying opposition to the idea. On the other hand, it noted that "to some extent we feel that certain types of businesses * * * do shoulder more than their share of the burden when the only approved energy strategy is temperature restrictions," and that it favored "some form of alternate plan for restaurants, lounges, and similar businesses where the personal comfort of the customer is a crucial part of the service." New Hampshire pointed out that with alternate plans it would be difficult: (1) For inspectors to document and verify when and what energy savings measures were taken, how much energy such measures conserved, and how those savings would have compared with those resulting from simple compliance with the EBTR temperature restrictions all along; (2) to recruit, train, and motivate compliance inspectors; and (3) to avoid "significant backsliding" on the part of building owners and operators. They concluded that, as a consequence of these problems, "much energy that could be conserved will not be."

Even where New Hampshire favored the use of an alternate plan, as with restaurants, it recommended that "the criteria for qualifying for that exemption be quite stringent." Before any such exemption is permitted, it suggested that a restaurant will have "instituted at least the following energy conservation measures": 6 inches of insulation in all ceilings, 3½ inches of insulation in all exterior walls, storm windows or double glazing, weatherstripping on all exterior doors, insulated heating and cooling ducts, installation of entry vestibules, and yearly heating system tune-ups. Finally, it recommended that utility energy consumption bills be retained and made available to inspectors "for the three most recent months, the average of which is less than the average for the same three-month period in any of the three most recent years (the comparison year to be chosen by the building owner/operator)."

To a degree, most of the commenting States and municipalities echoed concerns and remedies put forth by New Hampshire.

To avoid what New York City called "the danger that self-certification will lead to false claims on energy savings," many States recommended that

certification of the projected savings be obtained from a licensed professional engineer or a registered architect. Such a requirement was thought to be among the only practicable means of assuring that accuracy in energy savings would be guaranteed, together with evidence of sufficient quality and depth as to permit either a Federal, State, or local inspector to appraise the validity of an alternate plan being utilized by a building manager. The States of Delaware, Hawaii, Massachusetts, and Wisconsin also advocated such an approach, while Colorado noted that "short of hiring a professional engineer to undertake a laborious analysis, it is unclear to us how a building owner or operator could be certain of compliance * * *. It simply is not feasible or realistic for the DOE to expect building owners or operators to make such determinations without providing technical assistance to do so." It suggested that the final rule contain a "chart which establishes for a variety of building types the additional quantity of energy, stated as a percentage, that would have to be saved by a series of energy conservation measures in order to achieve compliance."

Preapproval of alternate plans, by either the State or Federal Government, was suggested by Alabama, Massachusetts, Wisconsin, and the City of New York, though none commented on the administrative burden this would represent to participating States or, where States chose not to implement the EBTR regulations, to the DOE Regional Offices.

The myriad of considerations and calculations which must be addressed by a professional engineer in certifying the energy efficiencies of an alternate plan were also noted by a number of commenters, as was the extreme difficulty this would pose for inspection personnel and for the inspection process. Massachusetts noted that the proposed alternate plan regulation "should be expanded to account for the plethora of variables that influence consumption. This will insure that comparative consumption data is based on common assumptions. It will also prevent unusually mild or cold winters/summers from unduly influencing the data." Among the variables it suggests, but is "not limited to," are: environmental data, climatic data, building data, operational characteristics, mechanical equipment, internal heat generation, and electrical equipment. New York City underscored that "the regulations would become meaningless without precise documentation, because inspectors may not be able to determine what constitutes proof of the required energy savings * * * It is not realistic to rely heavily on consumption figures without considering factors such as changes in building utilization, occupancy, and most importantly, severity of weather measured in degree days." It felt that a building manager must be required to "have professionally certified documentation of required energy savings available onsite for inspection and verification."

The type of skills needed by an inspector to verify that a building was in compliance with the EBTR regulations through use of an alternate plan would change dramatically, with the process approaching more that of an audit than a simple room temperature inspection. The District of Columbia pointed out that the alternate plan exemption "directly increases the technical skill an inspector would need, particularly if the integrity of the inspection is to be maintained as in the past." The alternate plan exemption would "significantly increase the tasks and responsibilities of * * * inspectors," who would need to be "savvy and sophisticated enough not to be buffaloed." The District of Columbia concluded that an inspector would need to "have a considerably larger framework of experience—energy expertise—in order to make a sound judgment as to whether or not the alternative is, in fact, going to accomplish the same good that could have been expected under the original program." All of this, it noted, would require a commitment to much "greater expense."

The financial ability of some building owners or operators to take advantage of the alternate plan proposal was mentioned by the Waco, Texas, Independent School District, which noted that not all types of owners have "an equal opportunity to take advantage of the alternatives." It noted that most of the alternatives "require capital expenditures. A public entity such as a school district is harder pressed to expend funds so that a higher level of comfort is achieved than a typical business establishment which may pass on some or all of the capital expenditure cost to the customers." Erie County, New York, alluded to this problem while commenting on other aspects of the alternate plan, stating that "because of decreasing returns, to increased investments, most buildings can reduce (energy) usage 10–20 percent through changes in operation with only minimal investment, whereas further reduction usually necessitates an investment in some new equipment."

The difficulty of not penalizing those who have already taken energy-efficient actions was stressed by a number of States, and by Erie County, New York. Erie County noted that "the requirement that proof of equivalent energy savings must include fuel consumption data for the most current period and for the previous two years * * * penalizes those building operators who have undertaken energy conservation measures and rewards those who have done nothing. Thus, this requirement makes the alternate plan very easy for buildings where even the most elementary energy conservation steps have not been taken, while increasing the size of the necessary investment for those buildings where low cost measures have been in effect for years." Erie County concluded by noting that even a two-year period may not be appropriate since it has "experienced wide variation in winter weather over the past several years," which would, under the proposal, "provide skewed results." Wisconsin was also concerned that new buildings would be penalized, even though they may have improved energy efficiencies due to State energy codes. It suggested that a baseline should be set from which savings by full EBTR compliance could be calculated. A given building owner could then meet relaxed temperature restrictions by demonstrating alternate savings even from pre-EBTR design features." It suggested the granting of "energy credits" to buildings which have met stringent energy codes, or have achieved substantial energy efficiencies which should be recognized during any imposition of the EBTR standards.

The balance of commentary offered by State and local governments and school districts dealt with a disparate range of topics related to the administrative and technical aspects of the EBTR regulations, and was not confined to only those amendments proposed in the May 27, 1980, Federal Register. To afford some idea of the views of these organizations, a representative summation of their key concerns (focusing largely on comments other than those already noted dealing with the alternate plan proposal), follows here.

Alabama noted:

The need for a more centralized and comprehensive public education and public relations efforts, pointing out that despite DOE and State efforts, "some people were unaware of the temperature restrictions."

The Certificate of Building Compliance should be printed in a single color scheme, especially since the program will now be an extended one.

The multi-colored certificates, which resulted from various printings during the course of last year's effort, are, they felt, confusing to the public.

Arkansas believes that the exclusion provided from the regulations to elementary schools should not apply during periods in which these buildings are unoccupied, as energy savings could be achieved during such periods. It also feels that States participating in the EBTR program should be permitted authority to inspect Federal facilities within its jurisdiction. Federal facilities are currently inspected by the agencies themselves (principally the General Services Administration, the U.S. Postal Service, and the Department of Defense, the principal Federal building owners/operators).

Colorado suggested that:

Buildings utilizing heat pump systems with resistance reheat coils have experienced increased energy usage or higher energy costs through increases in demand resulting from EBTR night temperature setback requirements and subsequent morning reheating. It felt that DOE's recommended relaxation of the requirements by five degrees (from 55 to 60 degrees) was an inappropriate resolution of the problem. It suggested that air-to-air heat pumps with supplemental resistance heat should be exempted from the setback requirement.

Colorado suggested that an alternate plan should have no temperature requirements whatsoever, and that building managers be permitted to meet EBTR-contemplated energy savings through individual measures which may in no way require restrictions on temperatures. Should DOE accept such an approach, however, it suggested that the Department set "a target percentage for energy savings to be realized from the alternate plan." The initial EBTR was "overly simplistic and prescriptive and ignored the major source of potential energy savings in commercial buildings: energy efficient operations and maintenance procedures."

The flexibility suggested by the alternate plan may persuade Colorado to join the program, since it felt confident in its capability to train and technically advise building owners and operators regarding the EBTR program.

The State of Delaware noted that:

Elementary schools, nursery schools, and day-care centers should be granted general exemptions rather than being excluded facilities. This would permit them to adhere to the hot water temperature and night time setback provisions of the regulations, and achieve the energy savings contemplated from those actions. Delaware agreed with the City of New York by noting that this step "would bring elementary schools under the program when no children are in them. Many elementary school buildings are open approximately 250 days a year while class days number approximately 185 days. Quite frequently, elementary school buildings are used by older children and adults during nonschool hours. Currently, use by these non-protected groups is not covered. We believe it should be."

Delaware also suggested that differentiation should be made in heat pumps based upon the type of supplemental energy. "While adjusting the setback temperature or temperatures for units with electrical supplemental heat should be energy conserving, it would not be for units with oil or gas supplemental heat." It suggested the amendment be modified to state that the setback temperature "will be set at the lowest possible point that will not require electric resistance supplemental heat."

The District of Columbia provided extensive comments on all aspects of the EBTR program and administrative process, including many of those above. Among the additional comments it offered were the following.

A restatement of the undeniable national need to conserve energy through all practicable means, and a summation of how the District has organized itself toward that end. It also expressed some disappointment that, given the need, only 24 States and Territories chose to administer the program within their jurisdictions.

It noted that the use of engineering students from Howard University as inspectors served the two-fold purpose of providing a learning experience to the students and providing a "future pool of human resources" upon which to draw for other energy conservation programs.

The District felt that public compliance was very high, in the range of 80 percent, and that building compliance was often brought to full level once building owners and managers were informed of the program's requirements and furnished the needed literature. It treated most of its inspections (as did many States) as an opportunity to educate building managers, rather than as a punitive enforcement activity. It did suggest, however, that an adequate enforcement mechanism does not exist, despite the possibility of fines, and that one must be devised.

The District concluded that the program was a "solid one," that "fits in beautifully with other energy conservation programs." It served as a "terrific springboard" to discuss other conservation efforts with many who were cooperative and anxious to learn more.

The Commonwealth of Massachusetts commented extensively on the alternate plan proposal, and its own efforts and experiences in implementing the Massachusetts comparable plan. Among the many technical comments it offered were those which suggested that:

The proposed temperature band in the alternate plan exemption was not sufficiently flexible, and that many buildings would not qualify for the plan under such a strict requirement. Thus, "long term energy savings may be forsaken for the want of three degrees of warmth.

"The alternate plan presents an ideal opportunity to garner long term savings by specifying that the energy conservation measures be permanent alterations to either the building envelope or energy utilizing systems."

Process energy should not be included in the consumption calculation. Massachusetts felt that this is wise "because process energy may be difficult to define; increased production can skew consumption data such that a building owner/operator would be hard pressed to qualify under the alternate plan exemption; and lower consumption due to debilitating economic conditions should not provide the justification for compliance. An example of this point would be a restaurant. As the number of meals that are served decreases, so will the energy consumption levels, whether or not any conservation measures are taken."

The State of Minnesota enclosed an extensive report covering its experiences in implementing the EBTR program, and commented on a number of the technical issues raised above. Among those comments were suggestions on how to deal with the provisions related to reheat, the night time temperature setback requirements, and the use of auxiliary heaters. It also noted that:

The requirement for balancing systems may go beyond the authority of the EBTR program, and suggested instead that proper maintenance procedures be mandated.

Cold well water systems should not be exempt, unless the "well water is pumped by windmill and reused in irrigation. There is no sense in wasting water because it is not a fossil fuel."

Further refinement of what constitutes a safety risk is needed, since "people working on machinery have no more right to an exemption than secretaries working with their fingers on a typewriter. Far and away the most common complaint with EBTR in

Minnesota's experience was with secretaries and typing."

The City of New York, which conducted 1,100 inspections and found a compliance rate of 80 percent, noted, among other things, that:

Section 490.41 should be reinforced to stress that the use of auxiliary heaters is prohibited where this will raise room temperatures above 65 degrees, and to note that the individual who uses such heaters is liable for noncompliance.

The definition of elementary school should be modified to note that any location, such as school museums and libraries, where elementary-aged school children congregate would be excluded entirely from the regulations during the period of their congregation.

The State of South Dakota took exception to the proposal that showers not be exempted from the regulations where their use is the consequence of an optional choice on the part of the user. "Given the national movement to support and encourage physical fitness," it suggested, "this would appear to be counterproductive." South Dakota felt that requiring a person to return home to shower would "subject the body to the chill and stress of shorter cool down periods after exercise," and, according to one doctor it consulted, "we feel this will cause unnecessary health risks in our winter climate. Given the small amount of fuel to be saved, we feel this practice would not be worth the health risks involved." South Dakota also noted that it cannot participate in the EBTR program since it lacks the funds to do so, though Federal funding was avaiable.

The State of Wisconsin offered many suggestions:

It felt that the exclusion of elementary schools entirely from the EBTR regulations was "unnecessarily stringent," and would require many alterations in thermostat settings to accommodate to stricter temperatures where older people were present, and not elementary students.

It also felt that the definition of hospitals should be amended to require that all nonpatient care areas, such as administration offices and lecture rooms, which have separate temperature control devices be required to comply with the EBTR regulations.

Heating and cooling restrictions should be maintained at a minimum of 65 degrees and a maximum of 78 degrees at *any* work station, as opposed to the average of representative work stations. Given the limitations of HVAC systems, this guarantee of temperature levels for each work station would, the State feels, improve public acceptance of the program. Thus the burden of lower or higher temperatures than those allowed under the program due to physical plant limitations would not be placed on employees, "just as plant changes (other than control strategy and proper maintenance), are not required of owners."

Wisconsin agreed with several other commenters that elementary schools should be exempted only during periods when elementary school children are present, and not for other periods of occupancy, except by the elderly. It also felt the exemption for shower use is too restrictive by limiting it solely to schools and workplaces where shower use is not optional, and suggested natatoriums be included.

It observed that opposition to the program was minimal, and that State inspectors found general public acceptance of the program. The cost savings potential, it surmised, was a key factor in building compliance. Wisconsin also noted, however, that despite public service announcements and press releases, "there is still a general lack of public awareness of the program." A key problem was "the failure to provide all covered buildings with an owner compliance booklet; failure to post a certificate accounted for 43 percent of all violations. Future staff efforts will concentrate on booklet distribution."

The temporary nature of the program was also singled out as a problem. It "generated a lack of interest on the part of both building owners and State employees, making it difficult to compete for the time and attention of both. The extension of the program and the proposal to make EBTR a permanent fixture has reduced these problems."

Reduction in the amount of information requested on an inspection report was requested, as was more extensive training of building inspectors in both the EBTR regulations and types of HVAC systems.

Wisconsin concluded with comments on the continuing difficulties of people tampering with thermostats, even with a lock-box protective device.

The municipalities and school districts which provided commentary covered many of these same topics, though additional views were offered.

The City of Houston felt the "EBTR is too complicated and too complex for the average building owner," and suggested "eliminating many of the temperature standards of the EBTR and stressing the operating hour restraints." It also noted that the regulation did not "include provisions for cities and other political subdivisions for funding to enforce their local alternate plan." It recommended that there be established "a procedure for large cities to apply for funds for enforcement in States that do not apply for the funds."

The City of Manchester asked that clarification of temperature readings taken at "breathing level" would be appropriate since it does not cover "students and office workers whose normal breathing level is between three and four feet."

The Legislature of Rockland County noted that many employees used fans and heaters, which "use more energy than readjusting the thermostats to a more realistic temperature." It felt that "discomfort is not only a loss of productivity, but affects morale as well."

The Board of Wayne County Auditors stated that they "do not believe the regulations as written provide for large buildings using radiators and window air conditioners." It concluded that "these systems are not capable of uniform control without major modifications and these systems will not meet the terms and conditions of the regulations as now written."

The Peoria Public Schools "wholeheartedly endorsed the revision of the heating maximum from 65 degrees to 68 degrees." Interestingly, it also joined several States in urging that elementary schools be included in the EBTR regulations, grades 1 through 6. Kindergartens, they felt, should remain at the warmer levels. It was noted that the regulations were directly responsible for savings during the winter season at the Peoria High School, which enjoyed a reduction by 22.8 percent in energy use in the first quarter of 1980 over the same period in 1979, although maintenance and operational changes may account for 5–10 percent of that savings. With respect to cooling temperatures, it recommended cooling no lower than 76 degrees. It noted that its administrative building was cooled last year to 78 degrees, in accordance with the regulations, and that after people "began to dress accordingly, they became generally comfortable in this environment." They estimated that reducing this temperature to 74 degrees would consume an additional 13 percent more electrical energy in the summer months.

The Los Alamos schools noted that the EBTR regulations should be expanded to include all forms of lighting. It noted that "not only are many areas of buildings significantly over-lighted, but there is a tremendous amount of energy waste caused by decorative lighting that is not necessary, and by outdoor advertising at inappropriate times."

Survey of State Opinions

Although 11 States, five cities and two counties provided commentary on the alternate plan proposal, it was felt that it would be desirable to have the views of all the States in order to better advise the Secretary on the desirability of the proposed changes to the EBTR regulations.

Therefore, DOE's Boston Regional Office conducted an informal poll of State Energy Offices on June 27, 1980. Of the 53 offices contacted, 11 were in favor of the proposed alternate plan exemption while 42 were opposed. Of the 24 States contacted which had implemented the program during the first nine-month effort, five favored the change, while 19 were opposed. Of the non-participating States contacted, six were in favor of the change and 23 were opposed.

Seven of the participating States opposed to the change cited its complexity as the reason for their opposition. Five of this group gave as an additional factor its inconsistency with the temperature requirements of the current program, which is already well accepted by the public. Two other participating States opposed to the change said they would prefer that a professsional engineer certify and validate the energy savings projected in alternate plans, and wanted guaranteed Federal training for inspectors.

Significantly, only two of the non-participating States in favor of the change indicated that the change would favorably influence their decision to accept delegation. Two non-participating States opposed to the change indicated interest in submitting a comparable plan, but five non-participating States opposed to the change said that their decision on accepting delegation would not be influenced by the alternate plan proposal. Six non-participating States opposed to the change were opposed to the program in general.

Congressional

On June 26, 1980, members of the staff of the Senate Special Subcommittee on Investigations met with members of the Office of Emergency Conservation Programs, the office charged with the administration of the EBTR program. The Subcommittee staff was concluding an inquiry into the EBTR program's implementation, performance, impact, and compliance experience across the country. Since these revised regulations were scheduled for publication prior to completion of the inquiry, the Subcommittee staff extended the courtesy of reviewing the highlights of the inquiry, to date, and indicating some of their concerns. It was stressed that the staff findings were preliminary, represented only the views of the Subcommittee staff, and had not yet been reviewed by any Members of the Subcommittee.

In general, the preliminary findings of the inquiry were consistent with the observations and findings of DOE's own studies and reports. The Subcommittee staff did raise questions about the effect the proposed alternative plan exemption could have on the continued success of the program. In this regard, they reflected, to a large degree, many of the views presented by the public in the hearing and the written record with respect to potential adverse effects on potential savings, enforcement, administrative cost, and public perception.

III. Summary of DOE Response to Public Comment

Alternate Plan Exemption Proposal

The alternate plan exemption was proposed as an amendment to the regulations as a consequence of suggestions by a number of organizations, principal among them the Building Owners and Managers Association International (BOMA), the National Retail Merchants Association (NRMA), and the National Restaurant Association (NRA). BOMA, in particular, has been of sustained and commendable assistance in implementing the EBTR program from its inception. That fact, together with its acknowledged expertise and nationwide experience in helping to bring buildings of all types into comformance with these regulations, weighed heavily in the decision to consider and publish for comment the concept of an alternate means of complying with the EBTR regulations.

For the many reasons stated in the notice of proposed rulemaking, and addressed above in the public commentary, such a concept has at first hearing an undeniable appeal. Under ideal administrative and compliance conditions, many assert that energy savings equal to or in excess of those being realized by the present regulations might be achieved. This would occur in a more liberal regulatory atmosphere whose enhanced "flexibility" would permit building managers a variety of new options for meeting the intent if not the letter of the present EBTR program, and encourage them to experiment with and initiate a host of lasting and desirable energy conservation measures. An alternate plan would be most appropriate in a "permanent" temperature restrictions program, where building owner/operators could justify major capital expenditures, there was time to plan and install retrofits, and the States and DOE could make careful, adequate inspections for compliance. Not the least of benefits to be accrued from orderly implementation of alternate plans would be opportunities to relieve some of the discomforts engendered by the temperature restrictions. That problem is of considerable interest to restaurateurs, who perceive that part of their service is to provide customer comfort, and who feel that the lack of such comfort may be detrimental to their businesses.

For such reasons, it was apparent that the alternate plan concept had merit sufficient to warrant full scrutiny and public discussion, even under the pressures of an emergency program. This was true despite the fact that DOE realized the appeal of such an approach would by no means be universal among all segments of society, that it represented a notable departure from the original program approved by the Congress (Standby Conservation Plan No. 2), and that it posed administrative dilemmas of severe if not debilitating difficulty. As is reflected in the public commentary, this has proven to be so.

Commentary on the alternate plan exemption was considerable, consumed most of the attention directed to the proposed amendments, and touched upon every advantage and concern. Though frequently thoughtful and informed, it more reinforced than resolved the dilemmas inherent in the proposal. The remedies and administrative procedures proposed represented little in the way of a simple implementation process, and did less to suggest that inspection, enforcement, training, monitoring, and resource requirements attending implementation of the alternate plan approach would offer any but cumbersome operating processes. This fact is clearly reflected in the vast majority of public comments which favored the alternate plan concept, almost without exception, only after attaching the most stringent and severe caveats. There was also strong concern over the base period against which comparable energy savings might be measured, and over what "credits" might be allowed for energy conservation steps and achievements before or after the base period.

In light of this, DOE believes that amendment of the EBTR program to accommodate the proposed alternate plan exemption is inappropriate at this time. We have attempted to communicate the reasoning behind this

decision by summarizing the comments received in considerable detail. In an effort to further establish the basis for that decision, and to place it in perspective, the following discussion is offered.

1. *Documenting Compliance.* At present, building owners and operators can document the circumstances of building compliance by completing and retaining a single, highly simplified Exemption Information Form. Under an alternate plan exemption, that comparatively uncomplicated act would be supplanted by the need to assemble and retain a collection of records required to validate the energy savings accrued through an alternate plan. A wide variety of documents could be required for this purpose, ranging from fuel consumption statistics and utility bills to records of business activity.

Depending on which baseline or consumption period is selected against which to compare energy savings, no small problem in itself, it may be necessary to collect documents reaching back as far as three years. The nature and quality of such data will vary considerably from building to building, and may not necessarily prove that energy measures were in fact taken, or that they achieved the energy savings contemplated. Such doucments would require audit and analysis, rather than mere inspection as at present, and this would likely have to be performed over a period of time at some central facility rather than by an on-site inspector. Aside from complexity, the fact that only a very small fraction of the estimated three million buildings covered by the EBTR regulations would be inspected suggests that an enormous paper work and records burden would be imposed on businesses and building managers and yet may never be utilized by inspection personnel. The propriety of demanding that businesses surrender utility and other documents is not entirely assured; nor would be the confidentiality of such documents, especially as inspections often may be performed by private firms under contract to a State or DOE. The freedom of information and privacy issues would have to be addressed. What is now a straightforward, economical program would be supplanted by a complex, expensive one, for which DOE would need to seek an appropriation from the Congress.

2. *Inspections.* Inspections now require only simple checks on such factors as temperature and humidity levels, thermostat settings and locations, auxiliary heater use and exemption data. Under the alternate plan these would be augmented by the need to examine compliance documentation to verify energy measures and savings. Inspection personnel would have to receive a substantially higher level and different type of training to equip them for these new audit-like functions. It is possible that different people would be required for each function since the skills required to inspect an HVAC system may not be compatible with those required to examine utility, energy, or business records. The continued use of college engineering or science students, for instance, may not be appropriate in auditing records, though it has been for conducting temperature inspections.

The number of inspections conducted would necessarily decline as the complexity and time required to conduct them increases. Building managers would, of necessity, be required to divert time to an inspection to provide or explain compliance documents, or to reproduce them on demand. Presently, inspections may often be conducted entirely without or by only minimally diverting the attention of a building manager. The current successful and often appreciated focus on using inspections as an opportunity to consult with building owners about means of adjusting HVAC systems and building practices to comply with the regulations, and as a "springboard" to educate them on other conservation programs, would be lost as time would permit only that inspection chores be done and documents collected. The loss of this "consultative" quality in favor of the more formal "inspection" focus is viewed by DOE as unfortunate, especially since compliance across the country has been so high.

Finally, it should be noted that a "time lag" of at least a month may occur between the time an inspection is conducted and the results are analyzed and made known to the building manager. Presently an inspector makes this finding and leaves a copy of the inspection report with the building manager at the time of inspection. Such a time lag will seriously delay remedial actions, may represent lost energy savings, and will extend, as a minimum, by triple the present amount of time (2 weeks on the average) alloted to a noncomplying building manager to come into compliance.

3. *Enforcement Presence.* Given the circumstances above, the "enforcement presence" of the program would decline, and media and public perception of the degree to which noncompliance is likely to go uncorrected would not be favorable.

The ability to respond rapidly or to any sizable volume of public complaints of alleged noncompliance (registered, for example, through DOE or State toll-free "Hotline" services) would diminish, as would ability and time available to conduct follow-up inspections where a first inspection yielded either apparent noncompliance or noncompliance resulting from a lack of information about or an understanding of the EBTR regulations. All of this would occur in spite of Congressional concerns that the EBTR's second 9-month period yield a level of enforcement and inspection activity at least equal to the first. It would result in a seriously decreased public visibility for the program during the current "cooling season," and may thus have a deleterious effect on compliance. This would be exacerbated by media coverage, which has been extensive throughout the program, and by "media inspections" of buildings which appear to yield low compliance rates due to an inadequate understanding of the intricacies of HVAC systems and the many ways in which a building may be in compliance.

4. *Energy Savings Estimates and Opportunities.* Although a few (such as BOMA) perceive that relatively uncomplicated formulae and methodologies can be used to estimate energy savings which would have accrued under the present EBTR versus an alternate plan, most commenters strongly felt that such methodologies would prove disparate, complicated, and well beyond the realm of the typical building manager. Even though DOE may recommend certain methodologies, it is unlikely that these would be suitable or available to each of 3 million building managers. The effort to validate such methodologies and calculations would also tax the skills of an inspector who might try to render rapid on-site inspection service, and even those of any central DOE analytical facility. As a consequence, a number of commenters (including State EBTR implementation agencies) recommended a massive program of technical education and assistance, not just for EBTR inspectors and administrators, but building owners and operators as well. Time and resources simply are not available for this purpose. The complexities of analyzing compliance documents, energy savings statistics, and methodologies are such that serious doubts exist as to whether anyone could ever firmly ascertain compliance.

The cost ot building owners of implementing alternate plans, in some instances may also prove prohibitive, especially for smaller businesses or

organizations, such as school systems with limited funds. The extra cost of documenting and analyzing energy use, obtaining the certification of a professional engineer, and altering plant facilities and HVAC systems may discriminate against those unable to afford or obtain funding. This may be compounded by the emergency character of the EBTR program, which has necessarily been imposed at once and without regard to government or business fiscal cycles.

5. *Options and Good Conservation Practices.* It should be noted that the present EBTR regulations, as amended, provide reasonable options to building managers which permit them to operate or adjust HVAC systems in a variety of ways while yet remaining in compliance. A comprehensive array of exemptions is offered for a wide range of health and system-related reasons, and exceptions are provided for both health and economic reasons. Further, lawful application of the temperature measurement provision which allows for the warmest room (when cooling) or the coolest room (when heating) to serve as the "complying room," has helped many in providing more comfortable temperatures to customers and tenants than those nominally prescribed by the regulations. It should also be noted that, despite the discomfort expressed by many, most reports available to DOE continue to stress that most people do adjust to the EBTR temperatures.

An opportunity for implementing the alternate plan concept at the State and local governmental levels already exists through the institution by these agencies of "comparable plans." Under provisions of Section 490.35, any State or political subdivision with an approved comparable plan "may include procedures permitting any person affected by the regulations to use alternative means of conserving at least as much energy in affected buildings as would be conserved by the temperature restrictions." The only proviso is that the comparable plan must be mandatory.

Otherwise, the features of a comparable plan may differ broadly or in detail from the EBTR regulations, may include "procedures for the approval on a building-by-building basis" of alternative means of complying with the comparable plan, and "need not conserve energy in the same fashion as the building temperature restrictions." Since States and local subdivisions have the primary responsibility for administering the EBTR program and developing comparable plans for approval by DOE, DOE believes that it is they who should be urged to consider the incorporation of alternate plan exemptions within comparable plans, and that such an exemption should not be uniformly imposed on all States through an amendment of the EBTR regulations.

Good conservation practices are appropriate at any time, and many may be compatible with the EBTR regulations in achieving significant energy savings. Most such practices would guarantee permanent energy savings which would extend beyond the short life span of this emergency effort. The EBTR was intended as a temporary response to a national energy supply shortage, and was designed to achieve rapid and immediate energy savings through an economical and inexpensive effort with which most building managers could comply without undue distress or cost. While the initiation of additional conservation measures by building managers is a worthy and desirable byproduct of the EBTR program, such is not its essential or legislatively-authorized purpose. The economics and long-term energy benefits of other building conservation measures, especially in these times of costly and uncertain fuel supplies, should be evident and pursued regardless of the EBTR or any other emergency program.

In the vast majority of cases, the EBTR effort is one with which both building owners and other citizens can comply, and chose to do so, particularly since it serves to underscore the reality and persistence of the energy supply problem which engendered it. DOE feels that this forceful, direct, and daily reminder of the unyielding need to conserve energy has in itself substantially enhanced America's appreciation of and efforts toward conservation, and that it should not be altered or diminished.

6. *Simplicity and Public Perceptions.* As many stressed, and as was paraphrased by Erie County, New York, the "key to EBTR's strength is its simplicity." The intent, process, and result of this regulatory program is clearer to building owners and operators than in many programs, and appreciated by the media and the public. The heating and cooling temperature limitations (65°/78° F.) have been well and widely publicized, and serve almost as the sole source of public awareness of building compliance and complaints of alleged noncompliance.

7. *Time and Resources.* Given the complexities and administrative disadvantages of the alternate plan approach discussed above, DOE feels that such an approach cannot be well implemented in the less than six months remaining before the program is scheduled to end. As suggested, altering the rules so substantially and so close to the termination of the program will not serve this effort well, or benefit public perceptions and continued support. Further, grants and contracts to conduct inspections probably will not be concluded until September, allowing little time for inspections and permitting even less for the analysis of building compliance documents which would attend inspections conducted under an alternate plan approach.

Finally, resources are severely restricted, and may not support a level of inspection activity equal to the first 9-month period. Participating States have frequently commented that previous funding was not sufficient, and they are unlikely to expend additional sums implementing and expanding training for the new alternate plan proposal.

In conclusion, DOE believes that the merit of the alternate plan approach is real, but inappropriate to the intent and life span of the Emergency Building Temperature Restrictions, especially as these could, in fact, be rescinded at any time before January 1981. DOE is currently addressing the desirability of proposing legislation to establish a more permanent set of non-residential temperature restrictions, and will consider whether this offers a more favorable context within which to incorporate an alternate approach to compliance.

Other Revisions to the Regulations

490.5 Definitions

The following new or revised definitions have been included as amendments in order to clarify the intent of the regulations.

The definition of "capability for simultaneous heating and cooling" has been further refined by the addition of the words "at the same time," to specify a single HVAC system which may both heat and cool at the same time.

"Coolant" has been defined to specify "the liquid which is circulated through heat exchangers for the purpose of removing heat from the air." Section 490.12 was originally written visualizing chilled water as the coolant. Questions have arisen as to whether § 490.12 is applicable when the refrigerant itself is the coolant. This modification makes clear that this section does apply to such refrigerant systems. In a small number of cases, operation of such systems at a coolant temperature of 55 degrees may create the likelihood of compressor damage. An amendment to § 490.12

permits a higher refrigerant temperature where such likelihood exists.

"Hospital and health care facility" has been redefined to clarify DOE's intent to include doctors' and dentists' offices within the scope of the regulations, unless an exemption is claimed by the doctor or dentist. An exemption is available under § 490.31(5)(i) to any physician or dentist who finds that conditions warrant claiming such an exemption where the health of patients may be endangered.

Since there has been some confusion in the past about which areas of a hospital or health care facility are excluded and which are eligible for exemption, DOE offers the following clarification.

EBTR applies on a building-by-building basis. Three major classes of buildings are automatically excluded: hospitals and health care facilities, elementary schools, and residential buildings. When portions of elementary schools or residential buildings are on separate controls and do not serve the stated elementary school or residential functions, those areas are *not* excluded from the regulations and are expected to comply.

In the case of a hospital or health care facility, this distinction is not drawn. Hospital buildings are completely excluded, even if nonpatient-care areas are within them. However, in a hospital or health-care complex comprising several buildings, only those buildings meeting the definition of "hospital or health care facility" are released from compliance. All other buildings must comply. In cases where this would pose a risk to health, materials, or processes (e.g., some doctors' or dentists' offices, some laboratories) exemptions may be claimed under § 490.31 for those areas.

"Dry-bulb temperature" has been redefined to include "adjusted dry-bulb temperature" as defined in the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 55–74, "Thermal Environmental Conditions for Human Occupancy." This has been done to reduce the chance that an individual will be required by the Regulations to work under conditions thermally less comfortable than those contemplated by the regulations. For example, on a cold day, an individual located near to a large window or exterior wall may sense temperatures below actual room temperature. Adjusted dry-bulb temperature takes into account the effects of unusual radiant heat gain or loss, and air velocity. Since some building owners may wish to avoid the calculations necessary to determine adjusted dry-bulb temperature, use of a globe thermometer to take temperature readings is permitted as an alternative.

In response to the proposed expansion of the definition of "elementary school" to include other areas where children of elementary school age congregate (such as clubs, associations, museums, etc)., the Peoria Public Schools suggested revolving the exclusion for schools serving grades 1–6. Their comment cited substantial savings achieved at the secondary school level due to EBTR. Comment was also received pointing out that the possible results of extending the exclusion to all areas where groups of children meet might exceed DOE's intent. Children attending club or group meetings normally do so for short periods of time, and on a voluntary basis. Where the attendance of children of elementary school age is mandatory, as in schools, the exclusion applies. Extra-curricular activities or school trips are optional and occur during short time periods, when the disparity between school and club temperatures, if it exists, can easily be anticipated and accommodated. Therefore, the proposed amendment extending an exclusion from the EBTR restriction during such periods has been withdrawn.

Several commenters stated that when an elementary school building is unoccupied or used for functions attended by individuals above the sixth grade, it should be covered by the temperature restrictions. Such a change would be of a scope great enough to necessitate presentation as a proposed, rather than a final rule. Although during such times the elementary school building is still excluded from the regulations, DOE takes notice of comment received from all sectors citing significant savings attributable to the night-time temperature setback restrictions and the hot water temperature restrictions. Businesses have reported this strategy as a standard procedure in the past, and the energy benefits of such actions have been documented during the EBTR effort. Although it is not a requirement, DOE takes this opportunity to urge adoption of reduced temperatures in elementary school buildings during the times that children are not in attendance.

The National Education Association requested further clarification of the definition of "elementary schools" to ensure that non-classroom areas of grammar schools (e.g., cafeteria, gymnasium, auditorium, etc.) qualify for the same exclusion from EBTR. DOE refers to the definition of "elementary school" to point out that classrooms have never been specified as the only areas within an elementary school building or complex covered by the exclusion.

"Energy that would otherwise be wasted" has been defined in order to clarify that term as used in § 490.18.

A definition has been added for "intermediate season" since it is necessary to describe those times when both heating and cooling may be required in a building at different times during the same day (e.g., heating in the morning and cooling in the afternoon). "Intermediate season" also refers to those periods when heating and cooling are required at the same time in different parts of the building. This may be the case, for example, in a large office building which, in winter, may require heating near the perimeter due to radiant heat loss, but cooling in the interior rooms due to core heat buildup.

"Reheat" has been defined to clarify the type of system operation prescribed by the regulations.

"Solar energy" has been redefined to specify the types of renewable resources intended to be encompassed by this term. These include wind, geothermal, small scale water power, or biomass resources, including wood and any combustible municipal or industrial trash or waste materials.

The definition for "unoccupied period" has been refined to specify that a building must be unoccupied for eight hours or more to be considered "unoccupied" for purposes of these regulations.

The Nevada Classified School Employees Association (NCSEA) has submitted comment on the definition of "occupied period" which pointed out that by excluding the time when "such service functions as cleaning and maintenance" were being performed from the period when a building could be considered to be occupied for heating and cooling purposes, DOE has possibly created a situation which could be unhealthy for service personnel. The purpose of the "service functions" provision was to prevent heating or cooling an entire building when only a small number of persons were present, especially when their work could be accomplished in the period following the normal work day when temperatures would be most like those during the normally occupied period.

NCSEA stated, however, that this provision would not allow building managers to provide reasonable temperature and/or ventilation levels for employees who perform tasks over a period longer than only that right after the close of the work day, such as custodial or maintenance personnel working normal eight hour days during a

school's summer vacation period or working extensively on weekends.

It was not the intent of the Department to prevent heating or cooling under such conditions. Therefore, the qualifying statement which excludes service functions from the definition of "occupied period" has been removed, although DOE would like to continue to urge building managers to schedule ordinary service functions as close to or during the occupied period as possible in order to realize the greatest energy savings available and still provide reasonably comfortable temperatures for personnel. It should also be noted that DOE encourages the use of ventilating equipment during this thermal buffer period as a means of providing more comfort or protection (from such problems as strong cleaning fluid fumes), where such equipment can be controlled separately from the heating and cooling systems.

A definition has been added for "work station" as that area within a room where an employee ordinarily performs principal work-related tasks. This new definition was necessitated by changes in allowable temperature measurement techniques. It refers to primary work areas (e.g., a typist's desk or a factory bench) and not to any area of a room where tasks may occasionally be performed.

490.12 HVAC Systems With Capability for Simultaneous Heating and Cooling

This section has been amended to distinguish between the types of systems referred to in § 490.12(b)(1) (fan coil, induction, baseboard or similarly operated units) and those referred to in § 490.12(d)(1) ("all-air" systems). Fan coil, induction, baseboard or similarly operated units are those in which cooling or heating of the air in the room is accomplished by passing room air over a heat exchanger in the room to which water or another fluid has been piped. In an all-air system, air which had previously been heated or cooled elsewhere in the system is carried into the room through ducts.

It was proposed to revise § 490.12 to state definitely that the use of reheat is banned by these regulations except where necessary to maintain adequate temperature control. Because of questions on the meaning of "adequate control" this paragraph has been made more specific establishing a minimum temperature of 65 degrees in any occupied building which is being maintained generally at a higher temperature as prescribed elsewhere in the regulation.

If temperatures below 65 degrees F. are encountered in some occupied parts of a building being cooled to an approved temperature, i.e., to 78 degrees F. or higher or to a lower temperature permitted by claimed exceptions and/or approved exceptions, the temperature of the cold rooms may be raised to 65 degrees by opening a window, use of a portable electric heater, use of reheat, or by any other method.

Where reheat is the selected method, the operating technique applicable to the intermediate season is described in the new §790.12(e)(3). No operating technique applicable to the cooling season is set forth because under "cooling season" by definition no heating is taking place. If space temperatures below 65 degrees are encountered in some part of the building when an attempt is being made to cool the building to a permitted level, the building owner/operator will ordinarily supply heat to the cold spaces as permitted under § 490.12(a)(1) and thereby immediately establish a conversion to the intermediate season.

A number of commenters proposed additional exceptions to the prohibition of reheat: when the heat energy is recovered energy; in hospitals; to maintain building service system safety and intergrity and prevent condensation; to prevent growth of mildew, mold, and fungi; and in libraries, museums, etc., where humidity control is essential for the preservation of materials.

DOE maintains that the use of reheat is almost always wasteful of energy. When any building or portion thereof is being cooled, heating of the recirculating air or the incoming outside air regardless of the source of this heat must necessarily increase the load on the air conditioning equipment and waste energy. When no cooling is being produced, use of the heating element is permissible. The other exceptions proposed above are already included in the regulations as exclusions or exemptions: hospitals are excluded; excessive humidity levels (i.e., above 65 degrees dew point at 78 degrees F.) can be countered because § 490.12(a)(2) permits lower dry bulb temperatures; building damage due to condensation or growth of mold, mildew, or fungi can be a valid basis for claiming an exemption under § 490.31(a)(6); and museums, libraries, and archives also may be exempted under § 490.31(a)(4).

Present EBTR regulations provide alternative ways to comply with cooling season room temperature restrictions. One of the options available is to limit coolant temperature to 55 degrees or higher. DOE has also received reports that in a small number of systems, compressor surging could result from limiting coolant temperatures to those required by the regulations. The amended regulations allow operation of these systems at temperatures below 55 degrees, but only if necessary to prevent equipment damage. Where any doubt exists that equipment will operate satisfactorily at specified coolant temperature, DOE recommends consultation with the compressor manufacturer.

Section 490.12 has been further revised to clarify proper HVAC operation during the intermediate season. The effect of this revision is to confirm that in the intermediate season a "deadband" between 65 degrees and 78 degrees exists in which no energy may be consumed in heating or cooling a room except to the extent that temperatures below 78 degrees can be attained with 55 degree coolant temperatures or 60 degree supply air, as stipulated in § 490.12. This is not intended to preclude system operation at any time under exemptions available in § 490.18, including the use of outside air.

490.13 Requirement for Accuracy of Space-Conditioning Control Devices

In order to prevent the relocation of thermostats to thwart the intent of these Regulations, an amendment prohibiting such relocations has been added. With this revision, it would be a violation of the regulations to move a room thermostat from an interior to an exterior wall, or from an occupied room to a storage area in the same thermostat zone, for example, with the intention thereby of raising or lowering temperatures in the occupied room.

This section has been further revised to require that space-conditioning control devices be maintained in proper repair, if such devices are being used to maintain temperatures required by these regulations.

One commenter reported that in hotel meeting rooms thermostats were being "jimmied" by guests to achieve more comfortable temperatures. Such action is prohibited by § 490.13(b) which reads "no person may alter or relocate a space conditioning control device to thwart the intent of these regulations, or to bring about room temperatures prohibited elsewhere in these regulations."

490.14 Regulation of Building Temperatures During Unoccupied Periods

A number of buildings utilizing heat pump systems have experienced increased energy usage by complying with EBTR night temperature setback requirements due to an inability to bring building temperatures back up to occupied period temperatures without

an excessive use of electrical resistance elements. An amendment has therefore been added which exempts such systems from the 55 degree night setback requirement and raises the setback level for those systems to 60 degrees if such operation will reduce monthly energy consumption or peak load use. One commenter pointed out that the 60 degree setting would be inappropriate where the temperature during the occupied period was not 65 degrees F. It was recommended that the setback be described as a differential, i.e., as the difference between the temperature held during the occupied period and the temperature held during the unoccupied period. Specifically, a five degree setback was recommended. In the interest of uniformity within and among buildings heated by heat pumps, DOE prefers that in all such buildings and parts thereof during the unoccupied period a temperature no higher than 60 degrees F. is to be maintained whenever the building owner/operator is convinced that the 55 degrees F. limit would result in higher consumption of energy or higher monthly electricity bills. One commenter suggested that buildings using heat pump systems be exempted from temperature restrictions during unoccupied periods. DOE disagrees believing that the 60 degrees F. temperature limit for unoccupied periods will in most cases result in energy savings. Accordingly, the proposed change in the regulations has been adopted.

During the course of the EBTR program, and in the public comment addressing the proposed amendments, a need to allow pre-heating and pre-cooling for some buildings so that temperatures reach regulation level when occupants arrive was identified. DOE would like to point out that under § 490.14(a)(4)(ii) this is already permitted for both heating and cooling. In addition, the amended definition of "dry-bulb temperature" allows temperature measurement to be adjusted for the radiant heat effect which can be significant during the start up of heating and cooling systems.

490.15 Auxiliary Heaters

Several comments were directed to the use of auxiliary heaters. The regulations have been amended to make clear that the use of auxiliary heaters is prohibited, except where necessary to bring the temperature in a room or at a work station (e.g., desk, work bench) up to 65 degrees. No auxiliary heaters may be used to bring the temperature at a work station above 65 degrees, except where permitted by an exemption or exception. Electric foot warmers and similar devices are not specifically proscribed by the regulations unless their use brings the room or workplace temperature above 65 degrees. Care should always be taken to keep flammable materials away from auxiliary heaters or other electrical devices when these are in use.

When the bulk of a building or portion thereof is maintained at a temperature below 65 degrees and only a small area is occupied, the use of portable heaters can save appreciable amounts of energy. When, however, an attempt is made to keep the entire space at 65 degrees, but the temperature falls significantly below this level in certain areas, it is apparent that some improvement to the building envelope (e.g., installation of storm windows or doors, more insulation) or to the HVAC system is needed. Such improvements are preferable to the use of portable heaters.

490.17 Measurement Techniques

Section 490.17(a) states that the temperature in any one of several rooms controlled by the same space conditioning control device may be measured to indicate compliance with the regulations. At the suggestion of the Department of Defense, wording has been added to preclude temperature measurements being taken for compliance purposes in rooms which do not contain work stations (e.g., file rooms, broom closets, storage areas) in order to attain more comfortable temperatures in other, normally occupied, rooms.

Allowable measurement techniques have been modified to allow temperature measurement at an average of representative work stations in a room (see Definitions, § 490.5). The nature of some HVAC systems, room size, or demands of business may make the temperatures at various work stations widely at variance with the average room temperature. When rebalancing the system does not correct the situation and/or relocating the work station is not feasible or is ineffectual, room temperatures may be measured by averaging the temperatures at representative work areas in the room. This will afford some relief to individuals at those work stations. The building owner/operator may choose the measuring technique to be used.

Several comments were directed at the vagueness of the proposed temperature measurements strategy which allows the average of readings taken at "representative" work stations to be a determination of compliance. One request was made to require all work areas to be measured and averaged. Another asked DOE to permit temperature measurements at the coolest work station when heating and the warmest one when cooling, analogous to § 490.17(a).

DOE answers the first suggestion by pointing out that such a requirement would be unreasonable in rooms where the extreme temperatures of a zone were easily identified and/or where the room contained more work stations than could be measured practicably (e.g., large factories, department stores, offices).

Although the second suggested strategy is based on the same reasoning already approved for determining compliance between rooms, the conditions are dissimilar. It is often easier to equalize the temperature within a room by using fans, relocating work stations, etc., than to do so between rooms. When wide differences in temperatures within a room prevail and cannot be corrected, the building owner/operator may apply for an exception.

With regard to room temperature measurements, the proposed amendment specified that readings "shall be taken at normal breathing level or between four and six feet from the floor." The term "normal breathing level" was included by way of justifying the reasonableness of the four to six foot height. Several commenters pointed out that for some individuals sitting down, especially children, breathing level is less than four feet from the floor. DOE should perhaps have included other justifications, such as: (1) The 4'–6' elevation is consistent with the elevation of most room thermostats which are typically located about 60" or 66" from the floor, (2) thermometers and thermostats at 4'–6' height are easily read and adjusted, and (3) the 4'–6' elevation is approximately midway between the floor and ceiling in a typical office building.

Since the term "normal breathing level" apparently suggests to some commenters a greater flexibility in the height of temperature measurement than DOE intended, this term has been deleted from the amended regulations, leaving temperature measurements specified simply as between 4' and 6' from the floor.

The regulations also have been amended to require that HVAC systems be properly balanced. System balancing in accordance with good commercial practice for the applicable HVAC system is crucial if the full energy saving potential of EBTR is to be realized.

A number of commenters discussed the balancing of distribution systems. One asked that a precise definition of the term be included while another

expressed the view that balancing was expensive and did not "belong" in EBTR. Another recommended re-balancing systems every two years in accordance with the requirements of the Associated Air Balance Council National Standards.

DOE prefers not to define "balancing" precisely or to specify the permissible temperature "spread" among rooms since the degree of balance obtainable will vary depending upon type of HVAC system, weather conditions, and other factors. For example, one cannot expect an antiquated steam heating system to maintain the same uniform temperatures throughout a building that a modern sophisticated computer controlled system provides.

Proper system balancing requires the services of knowledgeable people. In many buildings the building superintendent can do a creditable job, but in other buildings it may be desirable to engage specialists. Any reasonable costs incurred probably will be recovered through energy savings and the building owner should not be injured by the balancing requirement.

Several commenters noted that in humid regions of the United States the 65 degree dew point level required by the regulations (at 78 degrees F.) can result in mold, mildew and fungal growth. Several buildings were said to have been damaged by mold, and human discomfort has also been reported.

DOE has not received any documentation which identifies a particular building where fungi, mildew, or mold growth has occurred as a result of maintaining a 65 degree dew point. We have contacted a number of universities seeking an authoritative opinion on the growth of molds, mildew, and fungi in buildings, but without success.

The John B. Pierce Foundation Laboratory of New Haven, Connecticut, called our attention to a paper entitled "Controlling Moisture in the Home" by G. W. Brundett of the Electricity Council Research Center in Capenhurst, Chester, United Kingdom. In this paper the following statement appears: "The time for spores to germinate varies widely with temperature and relative humidity. Below certain relative humidities, usually 70%, the spores will not germinate. All houses contain a wide variety of species of mold spores which develop best over a range of temperatures. Other molds behave similarly although the optimum temperature varies with type."

Without more field and laboratory data than DOE now possesses, we cannot determine whether or not a change in dew point limit is desirable to control mold, mildew, and other growths.

Whether or not the change can be justified on human comfort grounds is also unclear. Two senior individuals from different, but highly respected, research organizations performing research in the human comfort area said the 65 degree dew point temperature limit was not acceptable and should be changed to 62 degrees. Two other similarly well qualified researchers affiliated with other organizations said that the 65 degree dew point level was quite reasonable and no change to the regulations was necessary. A similar diversity in viewpoint was held by the two HVAC consulting engineers contacted. One recommended changing the 65 degree limit to 62 degrees. The other recommended against doing so.

An unpublished revision of ASHRAE Standard 55–74, *Thermal Environmental Conditions For Human Occupancy,* contains language substantially as follows: "In the zone occupied by sedentary or near sedentary people the dew point temperature shall not be less than 1.7 degrees C. (35 degrees F.) or greater than 16.7 degrees C. (62 degrees F.)." DOE notes that changing the dew point temperatures is a significant change in the regulations which should not be made without first issuing a notice of proposed rulemaking to solicit public comment on the matter.

409.18 Exemptions from heating and cooling restrictions

The Minnesota Energy Agency objected to DOE's proposal to exempt HVAC systems where cold well water is used directly as the coolant, arguing that unless the well water were pumped by windmill and re-used in irrigation the exemption could encourage wasteful use of water. Use of cold well water directly as the coolant allows air conditioning to be accomplished without consumption of fossil fuels except for the fuel used to produce electricity for water pumping, and the use of pump power is permitted under § 490.16. DOE feels that exempting HVAC systems utilizing cold well water, however pumped, is logical and is consistent with the intent of § 490.18(a) (2) and (3). Prohibition of wasteful use of water is more properly a concern of local laws.

490.23 Maintenance of hot water temperature control devices

This section has been revised to require that domestic hot water temperature control devices be maintained in proper repair, if such devices are being used to maintain temperatures required by these regulations.

490.24 Exemption from hot water restrictions

Water temperatures in excess of 105 degrees F. are in many instances necessary to remove fat and grease deposits on equipment such as utensils, scales, slicing machines and cutting blocks used in meat markets, delicatessens, and other food stores. Unless such deposits are removed, bactericidal chemicals cannot effectively sanitize the equipment. A "Model Retail Store Sanitation Ordinance" will soon be published by the Federal Drug Administration. It specifies water temperatures for the various applications in the range 75–180 degrees F. State and local governments have promulgated regulations governing dishwasher water temperature and appropriate provision for this fact has been made in 4901.24(b). Very few jurisdictions, however, have promulgated regulations dealing with the temperature of water employed in food stores. A food store may properly claim exemption from the 105 degrees water temperature under § 490.24(a) of the present regulations since food preparation and dispensing can reasonably be construed as a commercial process. Many food stores are not aware of this interpretation. To deal with this matter, the wording of § 490.24(a) has been revised to make clear that the 105 degree water temperature restriction does not apply to those portions of covered buildings where higher temperatures are needed to properly clean food handling and dispensing equipment.

The water temperature employed however, must be no higher than necessary to do a proper cleaning job.

An amendment also has been added which exempts from coverage by the regulations individuals who are required by security, safety, or health regulations to wear special or protective clothing to perform manufacturing or industrial processes, when temperatures prescribed in the regulations would pose a danger to their health. Two commenters noted that in some instances employers may require special clothing that is not required by government security, safety, and health codes, and suggested changing the word "codes" in the proposed rules to the word "reasons." DOE feels that the word "regulations" better communicates the type of authoritative guidance which properly supports the exemption, and will insure that standard industry procedures as well as statutory requirements are encompassed in the

amendment. For example, this exemption would cover areas where individuals are required to wear impermeable coveralls due to possible exposure to fiberglass, radiation, fine dust, spray paints, etc. In other instances, high security or safety risks exist that prevent individuals from wearing needed layers of clothing to retain warmth (e.g., U.S. mints, activities where there are high risks of clothing being caught in machinery).

An amendment has been included exempting school and workplace shower and changing rooms from heating limit requirements where showers are a part of customary work procedure. The primary purpose of this amendment is to exempt workplace shower and changing areas only in cases where exposure of workers to potentially dangerous or irritating substances, such as coal or other mining dust, toxic chemicals, excessive grime, etc., would make it impractical or unhealthy for workers to leave the workplace before showering. This amendment is not intended to exempt shower and changing rooms in gymnasia, health clubs, or similar establishments, where showers on the premises are optional, except those associated with a senior citizens facility exempted under the exemption for such facilities.

General Motors Corporation and the American Iron and Steel Institute jointly reported that the change would permit industry to comply with labor contracts as well as with Federal Mine Health and Safety regulations, which require that bath houses be "adequately heated." Several commenters took exception to the qualifying phrase in the proposed rule "where showers are considered a required part of customary work or school procedure." A coal company pointed out that showers are "recommended" to miners but not required. A large chemical company reported that it also "recommended" showers but did not ordinarily require them, adding that a "requirement" is usually considered a work rule or condition of employment, the violation of which can be cause for dismissal. On analysis, it seemed reasonable to delete the words "considered a required" from § 490.31(a)(5)(v).

Senior citizen centers providing nutritional, recreational, and other services specifically intended for use by senior citizens have been exempted from compliance with the regulations to the level of 70 degrees during those times and in those areas where senior citizen activity is being conducted. This amendment incorporates a class exception from the regulations previously granted by the DOE Office of Hearings and Appeals to such facilities. The danger of accidental hypothermia does not appear to be a potential problem in the workplace since work activity would tend to keep people warm, and co-workers would likely recognize such symptoms and offer aid. However, the National Institutes of Health has recommended that temperatures be maintained at no lower than 70 degrees F. for the elderly, particularly the infirm, in their residences, since the danger of accidental hypothermia is greater for those living alone and/or whose level of physical activity is diminished. In any event, EBTR does not apply to private residences.

Although DOE was criticized for not defining an age group for the senior citizen exemption, DOE feels this omission was justified. Investigation into what is considered a standard, accepted age at which one becomes a "senior citizen" yielded a wide range of results from government and private agencies, benefit programs, medical authorities, and senior citizens themselves. Further, States responsible for implementing the EBTR regulations may have individual standards for identifying senior citizen activities. Therefore, "senior citizen" has not been defined.

490.34 Scope of exceptions or exemptions

The proposed amendment to this section required building owners or operators to provide temperature levels consistent with the needs of exempted or excepted building areas, businesses, systems, or individuals. Several commenters pointed out that such a requirement attempts to enforce temperatures other than those prescribed by the EBTR regulations. Thus, the wording of this section has been changed to encourage building owners and operators to fulfill their obligations to tenants and employees, whose claim to an exemption is valid, at the earliest practicable moment, especially in cases where the health of tenants, employees, or occupants may be in jeopardy. Such adjustments also should be made whenever possible in a manner consistent with maximum energy savings. For example, it may be more energy efficient to provide one individual granted an exception with a space heater than to adjust an entire HVAC zone to the temperature permitted by the exception.

Due to an inadvertent reversal in the wording of the concluding paragraph in § 490.34, an erroneous statement was made in the preamble to the proposed amendments. DOE would like to clarify here that nothing in these regulations is intended to imply that DOE requires temperatures above 78 degrees F. for cooling, or below 65 degrees F. for heating.

490.43 Posting of Certificates of Building Compliance

When the manual, *How to Comply With the Emergency Building Temperature Restrictions* was published in August 1979, it contained all the forms needed to comply with the EBTR program. Included was a Certificate of Building Compliance, which the regulations required be posted in a prominent location in every covered building. Those certificates continue to be valid, whether they are drawn from the original four-color printing, the reprint in blue, or a photo reproduction. They do not have to be replaced with any new certificate. Any building owner/operator who lacks the Certificate of Building Compliance, or needs additional copies, should request one or more copies by calling the toll-free Emergency Conservation Service Hotline at the telephone numbers shown at the beginning of this notice. In accordance with § 490.43(a)(1), such certificates must be promptly posted in a prominent location within each covered building. If a building owner or operator is claiming an exemption based on an amendment to the regulations, he should take the appropriate steps under § 490.43 within 30 days of the effective date of these regulations.

Environmental requirements

The Department of Energy has reviewed the Emergency Building Temperature Restrictions Program pursuant to its responsibilities under the National Environmental Policy Act (NEPA). In July 1979, the Department determined that the program did not constitute a major Federal action significantly affecting the quality of the human environment. This determination was based upon information which indicated that the changes in building temperatures required by the program regulations would result in very minor positive impacts on national air quality (less than one percent for all pollutants); negligible changes in emissions for water pollutants and solid wastes; and no detrimental effects on public health. The subject final rulemaking does not alter any substantive aspects of the existing program, but rather revises and clarifies certain technical details. It is the Department's judgment that this final rule does not contain any aspects which would alter the previous

determination regarding the lack of significant environmental impacts from the Emergency Building Temperature Restrictions Program. Therefore, an environmental impact statement is not required to support this action.

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below. Issued in Washington, D.C. on January 19, 1981.

(Federal Energy Administration Act of 1974, (15 U.S.C. 761 et seq.); Energy Policy and Conservation Act, as amended, (42 U.S.C. 6201 et seq.); Department of Energy Organization Act, 42 U.S.C. 7101 et seq.; E.O. 11790, 39 FR 23185 (June 27, 1974); E.O. 12009, 42 FR 4627 (September 15, 1977); Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions, 44 FR 12906 (March 8, 1979); E.O. 11912, 41 FR 15825 (April 13, 1976); Presidential Proclamation No. 4667, 44 FR 40629 (July 12, 1979); and Presidential Proclamation No. 4750, 45 FR 26019 (April 17, 1980))

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

PART 490—EMERGENCY BUILDING TEMPERATURE RESTRICTIONS

10 CFR Part 490 is amended as follows:

1. Section 490.5 is amended by revising paragraphs (a), (g), (n), (p), (y), and (dd) and adding new paragraphs (ff), (gg), (hh), (ii), and (jj).
2. Section 490.12 is amended by revising paragraphs (a), (b)(1), (d), and (e).
3. Section 490.13 is amended by revising paragraphs (a) and (b).
4. Section 490.14 is amended by adding paragraph (a)(5).
5. Section 490.15 is amended by adding a sentence at the end thereof.
6. Section 490.17 is amended by revising paragraphs (a) and (c) and adding paragraph (d).
7. Section 490.18 is amended by revising paragraph (a)(2).
8. Section 490.23 is amended by revising paragraph (a).
9. Section 490.24 is amended by revising paragraph (a).
10. Section 490.31 is amended by revising paragraph (a)(5) and adding a new paragraph (a)(7).
11. Section 490.34 is amended by rewording it.

For the convenience of the reader, Part 490, as amended, is set forth in its entirety as follows:

PART 490—EMERGENCY BUILDING TEMPERATURE RESTRICTIONS

Subpart A—Scope and Definitions

Sec.

Subpart B—Heating and Cooling Restrictions

Subpart C—Domestic Hot Water

Subpart D—Exemptions

Subpart E—General Provisions

Subpart F—Administrative Procedures

Subpart G—Investigations, Violations, Sanctions, Injunctions, and Judicial Actions

Authority: Federal Energy Administration Act of 1974, (15 U.S.C. 761 et seq.); Energy Policy and Conservation Act, (42 U.S.C. 6201 et seq.), as amended; Department of Energy Organization Act, (42 U.S.C. 7101 et seq.); E.O. 11790, 39 FR 23185 (June 27, 1974); E.O. 12009, 42 FR 4627 (September 15, 1977); Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions, 44 FR 12906 (March 8, 1979); E.O. 11912, 41 FR 15825 (April 13, 1976); Presidential Proclamation No. 4667, 44 FR 40629 (July 12, 1979); and Presidential Proclamation No. 4750, 45 FR 26019 (April 17, 1980).

Subpart A—Scope and Definitions

§ 490.1 Scope.

Except as otherwise provided in this part, this part applies to covered buildings in each state or political subdivision thereof, and shall supercede any law of any state or political subdivision thereof or any Federal order, regulation or directive, to the extent such law, order, regulation or directive is inconsistent with these regulations or any guidelines or orders issued pursuant thereto.

§ 490.2 Effective date.

These regulations first took effect on July 16, 1979, and, by Presidential Proclamation of April 15, 1980, will continue to be effective through January 16, 1981. The regulations may be terminated or suspended by the President at any time.

§ 490.3 Authority to contract or delegate.

DOE may delegate or contract for the carrying out of all or any part of the functions under this part.

§ 490.4 Authority to issue orders and guidelines.

DOE may issue such orders and guidelines, and may make such adjustments, as are necessary to administer and implement the provisions of these regulations.

§ 490.5 Definitions.

(a) "Capability for simultaneous heating and cooling" means an HVAC system that can supply heating to one part of the space-conditioning equipment while at the same time supplying cooling to another, including but not limited to dual-duct, reheat, recool, multizone fans, fan-coil units in combination with central air and induction units in combination with central air.

(b) "Cooling season" means those periods when the HVAC system in a covered building is operated such that no space heating is being used in that building.

(c) "Covered building" means every building or portion of a building, but excludes residential buildings, hotels or other lodging facilities, hospitals and health care facilities, elementary schools, nursery schools and day-care centers, and such other buildings and facilities as the Secretary may by rule determine: *Provided,* That to the extent that the non-sleeping facilities of a hotel, motel or other lodging facility have space-conditioning control devices separate from the sleeping facilities, the non-sleeping facilities are not excluded from the definition.

(d) "Dew point temperature" means the temperature at which condensation of water vapor begins as the temperature of the air-vapor mixture is reduced. When the dry-bulb temperature equals the dew point temperature, the relative humidity is 100 percent.

(e) "DOE" means the Department of Energy.

(f) "Domestic hot water" means hot water which is intended for use in covered buildings for personal hygiene or general cleaning.

(g) "Dry-bulb temperature" means the temperature of air as measured by a dry-bulb, or ordinary thermometer which directly measures air temperature. Where unusual radiant heat gain or loss, or where unusually high air velocity conditions prevail, an adjusted dry-bulb temperature may be calculated in accordance with American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 55–74 Thermal Environmental Conditions for Human Occupancy. Alternatively, Temperature may be read directly using a Vernon-type globe thermometer.

(h) "Elementary School" means any school which has any grades kindergarten through sixth grade, provided, that if the non-elementary grade portions of a building have space-conditioning control devices separate from the elementary portions, the non-elementary grade portions are not included within the definition of elementary school.

(i) "Fuel distributor" means any person who delivers oil or other fuel for use in a covered building.

(j) "Heating season" means those periods when the HVAC system in a covered building is operated such that no space cooling energy is used in that building.

(k) "Humidity" means a measure of the water-vapor content of air.

(l) "HVAC" means Heating, Ventilating and Air Conditioning.

(m) "HVAC System" means a system that provides either collectively or individually the processes of space heating, ventilating and/or air conditioning within or associated with a building.

(n) "Hospital and health care facility" means a building such as a general hospital, tuberculosis hospital or any other type of hospital, clinic, nursing or convalescent home, hospice or other facility duly authorized to provide hospital or health care services under the laws of the jurisdiction in which the institution or facility is located, but does not include the offices of physicians, dentists and other members of health care professions licensed by the State to provide health related services, which are not located in such a building.

(o) "Hotel or other lodging facility" means a building where sleeping and lodging accommodations are provided to the public, or to the members of a private membership organization or other private facility, in the ordinary course of business.

(p) "Occupied period" means that time of the day or night when the covered building or portion thereof is used for its ordinary function or functions.

(q) "Operator" means any person, whether lessee, sublessee or assignee, agent or other person, whether or not in physical possession of a covered building, who has control, either directly or indirectly through an agent, of heating, cooling or hot water equipment servicing the covered building.

(r) "Owner" means any person, whether or not in physical possession of a covered building, in whom is vested legal title, and who has control, either directly or indirectly through an agent, of heating, cooling or hot water equipment servicing the covered building.

(s) "Person" means any individual, corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, the United States or any State or political subdivision thereof, the District of Columbia, Puerto Rico, any U.S. territory or possession, or any agency of the United States or any State or political subdivision thereof, or any other organization or institution.

(t) "Public utility" means a publicly or privately owned and operated utility which is engaged in the sale of electric power or natural gas to end-users.

(u) "Relative humidity" means the ratio of the amount of water vapor in the air at a specific temperature to the maximum water vapor capacity of the air at that temperature.

(v) "Residential building" means any building used for residential purposes but does not include any portion of such building used for commercial, industrial or other business purposes and which, with respect to the heating and cooling requirements of these regulations, has separate heating or cooling space-conditioning control devices or, with respect to water temperature restrictions, has separate hot water temperature control devices.

(w) "Room" means that portion of the interior space which is contained within the exterior surfaces of a building, which is contained within floor to ceiling partitions, and which is conditioned directly or indirectly by an energy using system.

(x) "Secretary" means the Secretary of the Department of Energy.

(y) "Solar Energy" means energy derived from the sun directly through the solar heating of air, water and other fluids; indirectly through the use of electricity produced by solar photovoltaic or solar thermal processes; or indirectly through the use of wind, geothermal, small scale water power or biomass, including wood, and any combustible municipal or industrial trash or waste materials.

(z) "Space-conditioning control device" means a device for directly or indirectly controlling the room temperature and/or humidity by means of the HVAC system.

(aa) "Special equipment" means equipment for which carefully controlled temperature levels are necessary for proper operation or maintenance.

(bb) "State" means any State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(cc) "Temperature control device" means a thermostat or any other device used to regulate the operation of heating or cooling equipment or a hot water heater.

(dd) "Unoccupied" means those periods eight hours or longer of the day or night other than the occupied period.

(ee) "Wet-bulb temperature" means the temperature of air as measured by a wet-bulb thermometer, which is a thermometer having the bulb covered with a cloth, usually muslin, that is saturated with water.

(ff) "Coolant" means the liquid which is circulated through heat exchangers for the purpose of removing heat from the air. The coolant may be circulating water, refrigerant itself, or another fluid.

(gg) "Energy that would otherwise be wasted" means any heating energy rejected by any equipment of process, which can be employed directly or indirectly to provide for space heating or cooling or for domestic water heating without increasing the load on the original equipment.

(hh) "Intermediate season" means any time when both heating and cooling are being supplied to the entire building, but at different times on the same day, or are being supplied at the same time to different spaces in the building.

(ii) "Reheat" means the process of first cooling supply air and then raising the temperature again, by passing it over a heated surface or by mixing with warm air or by any other method, before introduction into living space.

(jj) "Work station" means the location within a room where an employee ordinarily performs his or her principal work related tasks.

Subpart B—Heating and Cooling Restrictions

§ 490.11 HVAC systems without capability for simultaneous heating and cooling.

In covered buildings with HVAC systems without the capability for simultaneously heating and cooling the building:

(a) No operator shall set space-conditioning control devices so that energy is consumed to raise the room dry-bulb temperature above 65°F;

(b) No operator shall set space-conditioning control devices so that energy is consumed to lower the room dry-bulb temperature below 78°F: *Provided,* That energy may be consumed to lower the room dry-bulb temperature below 78°F to the extent necessary to lower the room dew-point temperature to 65°F.

§ 490.12 HVAC systems with capability for simultaneous heating and cooling.

In covered buildings with HVAC systems capable of simultaneous heating and cooling of the building or portions thereof, operators shall set space-conditioning control devices in accordance with the following requirements:

(a)(1) Except as otherwise provided in this section, no operator shall set space-conditioning control devices so that energy is consumed to raise the room dry-bulb temperature above 65°F.

(2) Except as otherwise provided in this section, no operator shall set space-conditioning control devices so that energy is consumed to lower the room dry-bulb temperature below 78°F: *Provided,* That energy may be consumed to lower the room dry-bulb temperature below 78°F to the extent necessary to lower the room dew-point temperature to 65°F;

(3) During the intermediate season, at those times or in those areas where heat is being supplied to a room, operators of HVAC systems must comply with the requirements of paragraph (a)(1) of this section. During the intermediate season, when cooling, operators must comply with the requirements of paragraph (a)(2) of this section, or alternatively with paragraph (b)(1)(ii) of this section for operators of fan-coil, induction, baseboard, or similarly operated units, or paragraph (d)(1)(i) of this section for operators of "all-air" systems.

(b)(1) Operators of systems where the cooling or heating of room air takes place in equipment located in the occupied space (fan coil, induction, baseboard or similarly operated units) shall set space-conditioning control devices in accordance with the requirements of paragraph (a) of this section, or alternatively in the following manner.

(i) No heat is provided to the heating coil during the cooling season,

(ii) No liquid coolant is provided to the cooling coil at coolant temperatures below 55°F, and

(ii) No heat is supplied to a room if the room dry-bulb temperature is greater than 65°F.

(2) Operators of fan-coil, induction, baseboard or similarly operated units may alternate at any time between the requirements of paragraphs (a) and (b)(1) of this section.

(c) Operators of heat-pump systems shall set space-conditioning control devices in accordance with the requirements of paragraph (a) of this section.

(d)(1) in lieu of complying with the requirements of paragraph (a) of this section, operators of HVAC systems in which the room temperature is controlled by varying the temperature or flow volume of air which is introduced into the occupied space ("all-air" systems, including those with reheat) may set space-conditioning control devices so that:

(i) The dry-bulb temperature of the air leaving the cooling coils is 60°F or greater,

(ii) During the cooling season, the heating coil is turned off and the space-conditioning control device is set to 78°F, and

(iii) During the heating season, if the heating coil is turned on, the space-conditioning control device is set to 65°F.

(2) Operators of HVAC systems in which the room temperature is controlled by varying the temperature or flow volume of the air which is introduced into occupied space may alternate at any time between the requirements of paragraphs (a) and (d)(1) of this section.

(e)(1) Notwithstanding the requirements of any other subsection of this section, where a licensed professional engineer certifies by analysis that operation of a covered building in accordance with the requirements of paragraph (e)(2) of this section during periods prescribed in the analysis will result in the consumption of less energy than compliance with the requirements of paragraphs (a) through (d) of this section, that building may be operated in accordance with the requirements of paragraph (e)(2) of this section during those periods.

(2) For covered buildings qualified under the provisions of paragraph (e)(1) of this section, space-conditioning control devices shall be set at levels consistent with maximum energy savings, and the cooling system shall be adjusted such that:

(i) No liquid coolant is provided to the cooling coil at coolant temperatures below 55°F; or

(ii) The dry-bulb temperature of the air leaving the cooling coils is 60°F or greater.

(3) When a building or portion thereof is being cooled the use of reheat or other form of heat addition is prohibited, except that when an occupied covered building with a balanced distribution system is being cooled to a dry bulb temperature of 78 degrees or higher (or to another temperature permitted by a claimed exemption or approved exception) and the dry bulb temperature of any part or parts of the building falls to 65 degrees or below, heat may then be added to those part or parts by means of reheat equipment, portable electric heaters, opening the window or by any other method. In such cases heat may be added to maintain no more than 65 degrees F. in those occupied parts in which the temperature would otherwise be less than 65 degrees F. When reheat is thus added the temperature of the air leaving the cooling coils must be held at 60 degrees F. or greater, unless by so doing the temperature in other rooms would become higher than 78 degrees F. in which case a supply air temperature which is no lower than necessary to maintain a minimum of 78 degrees F. in those other rooms is permitted.

(4) When compliance with the requirements of paragraphs (a), (b)(1), (d)(1), or (e)(2) of this section would subject the compressor to the likelihood of damage, the coolant temperature may be lowered to the temperature level necessary to prevent such damage.

(5) Operators of covered buildings qualified under the provisions of paragraph (e)(1) of this section may alternate at any time between the requirements of paragraphs (a) and (e)(2) of this section.

(6) The certified analysis by a licensed professional engineer shall be made available to DOE or its delegate upon request.

(7) It shall be deemed a violation of the requirements of this part for a licensed professional engineer to falsely certify the analysis authorized by paragraph (e)(1) of this section.

§490.13 Requirement for accuracy of space-conditioning control devices.

(a) The operator of a covered building shall maintain within reasonable tolerances of accuracy and repair the space-conditioning control devices used to control temperature or humidity.

(b) No person may alter or relocate a space-conditioning control device to

thwart the intent of these regulations, or to bring about room temperatures prohibited elsewhere in these regulations.

§490.14 Regulation of building temperatures during unoccupied periods.

(a) During periods any covered building is unoccupied eight hours or more before the next normal occupied period:

(1) The heating system for that building shall not be operated if the anticipated minimum outdoor air dry-bulb temperature for the unoccupied period is greater than 50°F, and the cooling system for that building shall not be operated. The requirements of this subsection may be satisfied by turning off the circulating air or circulating water system.

(2) If the anticipated minimum outdoor air dry-bulb temperature for the unoccupied period is less than 50°F, the space-conditioning control devices for the heating system for that building shall be set such that one of the following results:

(i) The room dry-bulb temperature is less than 55°F;

(ii) The heated supply-air dry-bulb temperature is less than 100°F;

(iii) The heating-water dry-bulb temperature is less than 120°F; or

(iv) The space-conditioning control devices are set at less than 55°F, or at their lowest set point.

(3) HVAC system operation during unoccupied periods is permitted where requested by the public utility or district heating system servicing the building for purposes of load management.

(4) Notwithstanding the requirements of this section:

(i) HVAC system operation during unoccupied periods is permitted to the extent necessary to prevent damage to the covered building or its contents;

(ii) The HVAC system may begin operating at such time so that the temperature levels authorized by this Subpart may be reached at a time simultaneous with the beginning of the occupied period.

(5) When a building is heated by a heat pump such that the requirements of paragraph (a) (1) and (2) of this section may result in higher monthly peak demand or increased monthly energy consumption, or both, the space-conditioning control device during unoccupied periods may be set at 60 degrees F.

§490.15 Auxiliary heaters.

No auxiliary heating devices such as portable electric heaters, heat lamps or other devices whose principal function at the time of operation is to produce space heating may be operated except at such times that use of energy for heating purposes is authorized under the other sections of this subpart or when the covered building is unoccupied. When an auxiliary heating source is in use in a particular room or at a particular work station, the temperature in that room or at that work station shall not be brought above 65 degrees F.

§490.16 Use of ventilating equipment.

Nothing in this Subpart shall be deemed to prohibit the use of ventilating fan or pump power to heat a building to a dry-bulb temperature above 65°F or to cool a building to a dry-bulb temperature below 78°F.

§490.17 Measurement techniques.

(a) Where a space-conditioning control device controls the temperature for more than one room, the measurement may be taken in the room containing the device or any other regularly occupied room controlled by that device. The room with the highest temperature when cooling and the lowest temperature when heating may be measured for purposes of determining compliance with the requirements of this Subpart.

(b) Except as otherwise provided in this section, compliance with the requirements of this Subpart shall be determined by reading the set-point of the space-conditioning control device which controls the temperature for the room.

(c) Any of the following methods for measuring dry-bulb temperature, dew-point temperature, relative humidity and wet-bulb temperature may be utilized in lieu of a reading of the set-point on the space-conditioning control device. An operator shall be deemed to have complied with any temperature or humidity requirement of this Subpart so long as any one measurement technique indicates compliance with the relevant temperature or humidity requirement.

(1) Dry-bulb temperature shall be measured by:

(i) A thermometer placed within 24 inches of the space-conditioning control device;

(ii) The average of thermometer readings taken two feet away from and at the center of each external wall in the room, and at the center of the room;

(iii) If there are no external walls, the temperature at the center of the room; or

(iv) The average of thermometer readings taken at representative work stations in the room.

(2) Dew-point temperature shall be measured by:

(i) Observing the temperature of a glass at which condensation first occurs while cooling the glass;

(ii) By a dew-point indicating instrument; or

(iii) By inference from the wet-bulb temperature or the relative humidity.

(3) The relative humidity shall be measured by:

(i) A humidity-indicating instrument (hygrometer); or

(ii) By inference from the dew-point or wet-bulb temperature.

(4) The wet-bulb temperature shall be measured by:

(i) A wet-bulb-temperature-indicating instrument (psychrometer); or

(ii) By inference from the dew-point temperature or relative humidity measurement.

(5) The dew-point temperature, relative humidity and wet-bulb temperature may be measured within 24 inches of the humidity space-conditioning control device if located in the room, or in the same locations as used in the measurement of the dry-bulb temperature.

(6) To account for HVAC system cycling, all temperature and humidity readings may be taken as the average of several measurements taken at equal time intervals.

(7) Any temperature measurement shall be taken at between four and six feet from the floor.

(d) Before setting thermostats at the required level, the operator shall insure that the HVAC distribution system is properly balanced in accordance with generally accepted industry practice.

§490.18 Exemptions from heating and cooling restrictions.

(a) The requirements of this Subpart shall not apply to:

(1) Covered buildings or portions thereof which are neither heated nor cooled or which are equipped with space heating devices and space cooling devices with total rated output less than 3.5 Btu per hour (1 watt) per square foot of gross floor area.

(2) Buildings containing HVAC systems capable of using outdoor air, cold well water or evaporation of water for cooling effect without operation of a vapor compression or absorption-refrigeration system, but this exemption applies only with respect to cooling, and only during those periods when the outdoor air, cold well water and/or evaporation effect provides the only source for cooling.

(3) Buildings containing HVAC systems capable of using energy that otherwise would be wasted, but only during those periods when the otherwise

wasted energy provides the only source of heating or cooling energy.

(4) Buildings containing HVAC systems capable of using solar energy, but only during those periods when solar energy provides the only source of heating or cooling energy.

(b) For buildings or portions of buildings where the capacity of the HVAC system is insufficient to maintain the building or portion thereof at the minimum temperature levels for cooling authorized by this regulation when the building or portion thereof is occupied, the operator of said building may cool the building or portion of the building to a temperature level below 78°F before the building or portion of the building is occupied: *Provided,* That said reduced temperature level may only be maintained for the period of time necessary so that the temperature will reach the minimum level permitted by this regulation during the building's occupied period.

(c) Exemptions under this section may not be claimed when energy, other than waste, solar, pump or fan energy is used to operate a vapor compressor or absorption refrigerator.

Subpart C—Domestic Hot Water

§ 490.21 Regulation of hot water controls.

(a) The operator of a covered building shall set hot water temperature control devices so that the temperature of domestic hot water in such covered building does not exceed the greater of:

(i) 105°F, or

(ii) The lowest setting on the hot water temperature control device.

(b) The operator shall, where practicable, shut off domestic hot water circulating pumps during periods when a covered building is to be unoccupied for more than eight hours when such actions will not cause damage to the building, it systems, or internal processes or articles.

§ 490.22 Measurement of domestic hot water temperature.

(a) The temperature of domestic hot water shall be taken as the domestic hot water storage tank temperature measured in the hot water supply line, at the tank temperature control point, or at the tap nearest the tank discharge point.

§ 490.23 Maintenance of hot water temperature control devices.

(a) The operator of a covered building shall maintain all domestic hot water temperature control devices in that building within reasonable tolerances of accuracy and repair.

(b) No person may alter a hot water temperature control device with the intent of having that device function inaccurately.

§ 490.24 Exemption from hot water restrictions.

(a) The provisions of this subpart shall not apply in a covered building where the domestic hot water heating equipment also provides hot water for manufacturing, industrial, commercial or food preparation or handling processes and such processes or process clean-up procedures require hot water temperatures in excess of those prescribed in this subpart. In order to achieve the maximum possible energy savings, such temperature levels should be maintained at the minimum level necessary to provide for the exempted needs.

(b) The provisions of this subpart shall not apply in a covered building where domestic hot water is the only source available for dishwashing or other purposes in such covered building and state or local health regulations prescribe a minimum temperature level above 105° F for dishwashing or such other purposes. Domestic hot water control devices shall be set so as not to exceed the minimum level required by the state or local health regulations.

(c) The provisions of this subpart shall not apply to combination domestic water heating/space heating boilers during the heating season.

(d) The provisions of this subpart shall not apply at such times that solar energy provides the only source for domestic hot water heating energy. At such times that a hot water heating system using a non-solar energy source is being operated in conjunction with solar energy, this exemption shall not apply.

(e) The provisions of this subpart shall not apply to domestic hot water heating systems capable of using heat that otherwise would be wasted, but only at such times when the waste heat provides the only source of hot water heating energy.

(f) Exemptions under this section may not be claimed when energy, other than waste, solar, pump or fan energy is used to operate a vapor compressor or absorption refrigerator.

Subpart D—Exemptions

§ 490.31 General exemptions.

(a) In addition to the exemptions provided in other subparts, and subject to the limitations of this subpart, the following exemptions from the requirements of Subparts B or C of this part are available to any person for a building or portion of a building in accordance with the provisions of this section:

(1) Where a "manufacturer's warranty", service manual or equipment service contract requires specific temperature levels to prevent damage to special equipment.

(2) Where maintenance of certain temperature and humidity levels is critical to materials and equipment used in manufacturing, industrial or commercial processes.

(3) Where maintenance of certain temperature and humidity levels is required for the proper storage or handling of food or other agricultural commodities, raw materials, goods in process and finished goods.

(4) Any other circumstances where special environmental conditions are required to protect plant life essential to the operation of a business within a covered building, materials or animal life.

(5) Where maintenance of certain temperature levels is required:

(i) To protect the health of persons in offices of physicians, dentists and other members of health care professions licensed by the state to provide health-related services;

(ii) To protect the health of persons engaged in rehabilitative physical therapy in physical therapy facilities;

(iii) With respect to restrictions on heating only, to protect the health of persons utilizing indoor swimming pools;

(iv) To protect the health of individuals required by security, safety or health regulations to wear special or protective clothing to perform manufacturing, inspections or other industrial functions; or

(v) With respect to restrictions on heating only, to protect the health of persons in workplace or school shower and changing rooms where showers are part of customary work or school procedure.

(6) Where the structure or insulation of the building will be damaged.

(7) Where nutritional, recreational, and other facilities are specifically designated for use by senior citizens the thermostat may be adjusted to raise the dry-bulb temperature to 70 degrees F. during the heating season; except that this exemption applies only when senior citizens activity is being conducted and only to those portions of the facilities used for senior citizen activity.

(b) Exemptions claimed under Subparts B, C, and D of this part shall become effective when claimed.

(c) Any person claiming an exemption under any provision of Subparts B, C, or D of this part shall provide the owner or operator of the covered building with all

necessary information relating to the exemption including:

(1) The nature of the exemption and the section of the regulations claimed as the basis for exemption;

(2) The portions of the building for which the exemption is claimed;

(3) The required temperature levels in the exempt portions of the building consistent with maximum energy savings.

(d) The owner or operator of a covered building shall, upon request of DOE or its delegate, make available any information provided to the owner or operator under paragraph (c) of this section.

(e) Any person who claims an exemption to which he is not entitled is subject to the penalties provided in Subpart G of this part.

(f) Where the person entitled to an exemption under this Part is not the owner or operator of the covered building(s) to which the exemption applies, the owner or operator of the covered building(s) is authorized to adjust space-conditioning control devices and hot water temperature control devices in accordance with § 490.34.

(g) Any operator, other than an operator who claims an exemption, shall not be liable for violation of this Part as the result of acting in reliance upon an exemption which subsequently is determined to be invalid.

§ 490.32 Specific exceptions.

(a) In addition to the general exemptions available under § 490.31 or under Subparts B and C of this part, any person who would experience special hardship, inequity or an unfair distribution of the burden as a result of the requirements of Subparts B and C of this part may submit an "Application for Exception" in accordance with Subpart D of Part 205 of this chapter. An exception shall not become effective until such time as it is granted by DOE.

(b) If the person submitting the "Application for Exception" is not the owner or operator of the covered building(s) to which the requested exception is to apply, and if the exception is granted by DOE, then the owner or operator of the covered building(s) is authorized to adjust space-conditioning control devices and hot water temperature control devices in accordance with the provisions of the exception provided by DOE.

(c)(1) Any person who receives an approved exception under paragraph (a) of this section shall provide the owner or operator of the covered building with all necessary information relating to the exception including:

(i) The nature of the exception;

(ii) The portions of the building for which the exception is claimed;

(iii) The authorized temperature levels in the excepted portions of the building as determined by the terms of the exception or consistent with maximum energy savings.

(2) The owner or operator of a covered building shall, upon request of DOE or its delegate, make available any information provided to the owner or operator under paragraph (c)(1) of this section.

§ 490.33 Limitation of exceptions or exemptions.

(a) Where a portion of a covered building qualifies for an exemption under § 490.31 or any provision of Subparts B and C of this part, or for an exception under § 490.32, the operator may set temperature levels other than those prescribed in Subparts B and C of this part only for such portions of the covered building as necessary to maintain temperatures for the exempted sections. In those covered buildings where the space-conditioning control device or hot water temperature control device controls both the exempt and non-exempt portions of the building, the entire building or portion of the building may operate as if exempted from the temperature requirements of Subparts B and C.

(b) DOE may limit the exemption or exception granted by this part to all or any portion of a covered building. DOE may specify heating, cooling or hot water temperature controls to be applicable in the excepted portion of a covered building.

§ 490.34 Scope of exceptions or exemptions.

The operator of a covered building subject to an exemption or exception pursuant to this part shall, where practicable, maintain the temperature levels prescribed in Subparts B and C of this part, or such other levels consistent with maximum energy savings. When an exemption is claimed or an exception granted, the building owner or operator, or both, shall, upon notification, and without undue delay, take no further action to impose the temperature limits specified by those regulations in that portion of the building covered by the exemption or exception.

§ 490.35 Exemption procedures for states.

(a) A state or political subdivision thereof may seek an exemption from the application of this part in such state or political subdivision during a period for which the President of the United States or his delegate determines a comparable program of such state or political subdivision is in effect. The comparable program may include procedures permitting any person affected by the regulations to use alernative means of conserving at least as much energy in affected buildings as would be conserved by the temperature restrictions.

(b) A state or political subdivision thereof seeking an exemption on the ground that a comparable program is in effect shall submit to the secretary a "Request for Exemption" which shall include the following information:

(1) A full description of the comparable program, including the authority which allows for the mandatory imposition of the program;

(2) An estimate of the types and amount of energy which such program will conserve;

(3) The effective dates of the program;

(4) A description of energy conservation measures implementable at the state or local level and their expected energy savings;

(5) A comparison of energy savings estimated to result in that state or political subdivision from compliance with these regulations and estimated energy savings under the proposed comparable program which demonstrates that the comparable program conserves at least as much energy in the state or political subdivision as these regulations. The comparisons shall be performed using a consistent methodology for estimating building energy consumption.

(6) A description of procedures for the approval on a building-by-building basis of the alternative means and for enforcement of such alternative means by such state or political subdivision.

(7) Such other information as the Secretary may require.

(c) A request for exemption by a state or political subdivision shall be sent to the cognizant Regional Representative of the Secretary of Energy having jurisdiction over such State or unit of local government.

(d) For purposes of this section: "Comparable program" means a plan which is mandatory and which conserves at least as much energy in the state or political subdivision thereof as adherence to the requirements of these regulations would be expected to conserve in such state or political subdivision. The comparable program need not conserve energy in the same fashion as the building temperature restrictions require.

Subpart E—General Provisions

§ 490.41 Joint and several liability.

The owner and operator shall be jointly and severally liable for the execution of operator responsibilites under this part where an agency relationship exists between the owner and operator.

§ 490.42 Reporting requirement.

Any public utility or any fuel distributor shall make available to the DOE, upon request, customer lists or other information deemed necessary by DOE to administer and enforce these regulations.

§ 490.43 Self-Certification and Filing of Building Compliance Information Form.

(a) (1) The owner or operator of a covered building shall, within 30 days of the effective date of this regulation, complete in accordance with forms and instructions provided by DOE, and post in a prominent location within the covered building, a "Certificate of Building Compliance" certifying compliance with the requirements of this Part.

(2) The "Certificate of Building Compliance" shall set forth exemptions claimed by any persons within the covered building, or any authorized exceptions claimed by persons within the building.

(b) In addition to the requirements of paragraph (a) of this section, the owner or operator of a covered building shall, within 30 days of the effective date of this regulation, submit to DOE in accordance with forms and instructions to be provided by DOE a "Building Compliance Information Form" describing any exemptions or exceptions claimed by persons in that building.

(c) It shall be deemed a violation of this part for an owner or operator to knowingly provide false, misleading or incomplete information on the "Building Compliance Information Form" or the "Certificate of Building Compliance."

(d) DOE will make "Certificates of Building Compliance" and "Building Compliance Information Forms" and instructions available at convenient locations throughout the country. In addition, "Certificates of Building Compliance" and "Building Compliance Information Forms" and instructions for their completion may be obtained from the Office of Emergency Conservation Programs at the address listed in the For Information Contact section of this notice.

Subpart F—Administrative Procedures

§ 490.51 Purpose and scope.

This subpart establishes the procedures for determining the nature and extent of violations of section 524(c) of the EPCA and the procedures for issuance of a Notice of Violation, Violation Order, Violation Order for Immediate Compliance, Modification or Rescission Decision and Order, and Stay Decision and Order. Nothing in these regulations shall affect the authority of DOE enforcement officials in coordination with the Department of Justice to initiate appropriate civil or criminal enforcement actions in court at any time.

§ 490.52 Notice of violation.

(a) When any audit or investigation discloses, or the DOE otherwise finds, that any person has engaged, is engaged, or is about to engage in acts or practices contrary to the provisions of Standby Conservation Plan No. 2 (Emergency Building Temperature Restrictions) and implementing regulations in violation of section 524(c) of the EPCA, the DOE may issue a Notice of Violation. Any notice issued under this section shall be in writing and shall set forth the findings of fact and conclusions of law upon which it is based.

(b) Within 10 business days after the service of a Notice of Violation the person upon whom the Notice is served may file a reply with the DOE office that issued the Notice of Violation. The DOE may extend the 10-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a statement of all relevant facts pertaining to the acts or practices that are the subject of the Notice of Violation. The reply shall include a statement of the legal, business and other reasons for the acts or practices; a description of the acts or practices; and a discussion of the pertinent provisions and relevant facts reflected in any document submitted with the reply. Copies of all relevant contracts, reports, abstracts, compilations of data and other documents shall be submitted with the reply. The reply shall include a discussion of the relevant authorities which support the position asserted, including rulings, regulations, interpretations, orders and decisions issued by DOE.

(d) The reply should indicate whether the person requests an informal conference regarding the notice. A request for a conference must be in writing and shall be governed by the provisions of 10 CFR 205.171, which are incorporated by reference herein and made a part of this subsection.

(e) If a person has not filed a reply with the DOE within the 10-day or other period authorized for reply, the person shall be deemed to have admitted the accuracy of the factual allegations and legal conclusions stated in the Notice of Violation, and the DOE may proceed to issue a Violation Order in accordance with § 490.53.

(f) If the DOE finds, during or after the 10-day or other period authorized for reply, that no violation has occurred, is continuing, or is about to occur, or that for any reason the issuance of a Violation Order would not be appropriate, it shall rescind the Notice of Violation and inform the person to whom the Notice was issued of the rescission.

§ 490.53 Violation Order.

After considering all information received during the proceeding, the DOE may issue a Violation Order. The Violation Order may adopt the findings and conclusions contained in the Notice of Violation or may modify or rescind any such finding or conclusion to conform the Order to the evidence or on the basis of a determination that the finding or conclusion is erroneous in fact or law or is arbitrary or capricious. Such Order shall constitute a final agency order subject to judicial review. Unless otherwise specified, the Violation Order shall be effective 10 business days after the date of issuance. In the alternative, the DOE may determine that no Violation Order should be issued or that the Notice of Violation should be withdrawn for further consideration or modification. Every determination made pursuant to this section shall state the relevant facts and legal bases supporting the determination.

§ 490.54 Violation Order for Immediate Compliance.

(a) Notwithstanding the provisions of § 490.52 or § 490.53, the DOE may issue a Violation Order for Immediate Compliance, which shall be effective upon issuance and until rescinded or suspended, if it finds:

(1) There is a strong probability that a violation has occurred, is continuing or is about to occur;

(2) Irreparable harm will occur unless the violation is remedied immediately; and

(3) The public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under § 490.52.

(b) A Violation Order for Immediate Compliance shall be served promptly

upon the person against whom such Order is issued by personal service, telex or telegram, with a copy served by registered or certified mail. The copy shall contain a written statement of the relevant facts and the legal basis for the Violation Order for Immediate Compliance, including the findings required by paragraph (a) of this section.

(c) The DOE may rescind or suspend a Violation Order for Immediate Compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a Notice of Violation issued under § 490.52.

(d) If at any time in the course of a proceeding commenced by a Notice of Violation the criteria set forth in paragraph (a) of this section are satisfied, the DOE may issue a Violation Order for Immediate Compliance, even if the 10-day period for submitting a reply to that document has not expired.

§ 490.55 Modification or rescission.

(a) Any person to whom a Violation Order or Violation Order for Immediate Compliance is directed may make application for modification or rescission of such Order.

(b) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the DOE action sought; and shall include a discussion of the relevant authorities which support the position asserted, including, but not limited to, DOE rulings, regulations, interpretations and decisions. The applicant shall fully describe the events, acts or transactions that comprise the significantly changed circumstances, as defined in paragraph (e)(2) of this section, upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(c) The application should indicate whether the person requests an informal conference. A request for a conference must be in writing and shall be governed by the provisions of 10 CFR 205.171, which are incorporated by reference herein and made a part of this subsection.

(d)(1) If the DOE determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the DOE may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful the DOE may dismiss the application with prejudice.

(2)(i) If the applicant fails to satisfy the requirements of paragraph (b) of this section, the DOE shall issue an order denying the application. The order shall state the grounds for the denial.

(ii) The order denying the application shall become final within 5 days of its service upon the applicant, unless within such 5-day period an amendment to correct the deficiencies identified in the order is filed with the DOE.

(iii) Within 5 days of the filing of such amendment, the DOE shall notify the applicant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies, the notice shall be an order dismissing the application as amended. Such order shall be a final agency order subject to judicial review.

(e) *Criteria.* (1) An application for modification or rescission of an order shall be processed only if the application demonstrates that it is based on significantly changed circumstances.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based;

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the DOE, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order of the DOE affecting the applicant was issued, which change has occurred during the interval between issuance of such order and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

(f) Upon consideration of the application and other relevant information received or obtained during the proceeding, the DOE shall issue an order granting or denying the application. The order shall include a written statement setting forth the relevant facts and the legal basis of the order. Such order shall be a final agency order subject to judicial review.

§ 490.56 Stay pending judicial review.

(a) Any person to whom a Violation Order or Violation Order for Immediate Compliance is directed may make application for a stay of such Order pending judicial review.

(b) The application shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the application and to the DOE action sought. Such facts shall include, but not be limited to, all information that relates to the satisfaction of the criteria in paragraph (e) of this section. A copy of the Order from which a stay is sought shall be included with the application.

(c) If the DOE determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the DOE may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the DOE may dismiss the application with prejudice.

(d) The DOE shall grant or deny the application for stay within 5 business days after receipt of the application.

(e) *Criteria.* The grounds for granting a stay are:

(1) A showing that irreparable injury will result in the event that the stay is denied;

(2) A showing that denial of the stay will result in a more immediate serious hardship or gross inequity to the applicant than to the other persons affected by the proceeding;

(3) A showing that it would be desirable for public policy or other reasons to preserve the status quo ante pending a decision on the merits of the appeal or exception;

(4) A showing that it is impossible for the applicant to fulfill the requirements of the original order; and

(5) A showing that there is a likelihood of success on the merits.

(f) Upon consideration of the application and other relevant information received or obtained during the proceeding, the DOE shall issue an order granting or denying the application. The order shall include a written statement setting forth the relevant facts and the legal basis of the decision, and the terms and conditions of the stay.

(g) The grant or denial of a stay is not an order of the DOE subject to administrative review.

§ 490.57 Consent order.

(a) Notwithstanding any other provision of this Subpart, the DOE may at any time resolve an outstanding compliance investigation or proceeding with a Consent Order. A Consent Order must be signed by the person to whom it is issued, or a duly authorized representative, and must indicate agreement to the terms contained

therein. A Consent Order need not constitute an admission by any person that DOE regulations have been violated, nor need it constitute a finding by the DOE that such person has violated DOE regulations. A Consent Order shall, however, set forth the relevant facts which form the basis for the Order. A Consent Order is a final Order of the DOE having the same force and effect as a Violation Order issued pursuant to § 490.53.

(b) At any time and in accordance with the procedures of § 490.55, a Consent Order may be modified or rescinded upon petition by the person to whom the Consent Order was issued, and may be rescinded by the DOE upon discovery of new evidence which is materially inconsistent with the evidence upon which the DOE's acceptance of the Consent Order was based.

(c) Notwithstanding the issuance of a Consent Order, the DOE may seek civil or criminal penalties or compromise civil penalties pursuant to Subpart G concerning matters encompassed by the Consent Order, unless the Consent Order by its terms expressly precludes the DOE from so doing.

(d) If at any time after a Consent Order becomes effective it appears to the DOE that the terms of the Consent Order have been violated, the DOE may refer such violations to the Department of Justice for appropriate action in accordance with Subpart G of this part.

§ 490.58 Remedies.

A Violation Order, a Violation Order for Immediate Compliance, a Modification or Rescission Decision and Order, or a Consent Order may require the person to whom it is directed to make an appropriate adjustment in building or domestic hot water temperature, to post a correct Certificate of Building Compliance, and to take such other action as the DOE determines is necessary to eliminate the effects of a violation.

Subpart G—Investigations, Violations, Sanctions, Injunctions, and Judicial Actions

§ 490.61 Investigations.

Investigations will be conducted in accordance with the provisions set forth in 10 CFR 205.201.

§ 490.62 Violations.

Any practice that circumvents or contravenes or results in a circumvention or contravention of the requirements of any provision of this Part or any order issued pursuant thereto is a violation of the regulations stated in this part.

§ 490.63 Sanctions.

(a) *General.* Any person who violates any provision of this Part or any Order issued pursuant thereto shall be subject to penalties and sanctions as provided herein.

(1) The provisions herein for penalties and sanctions shall be deemed cumulative and not mutually exclusive.

(2) Each day that a violation of the provisions of this chapter or any order issued pursuant thereto continues shall be deemed to constitute a separate violation within the meaning of the provisions of this chapter relating to criminal fines and civil penalties.

(b) *Civil penalties.* (1) Any person who violates any provision of this part or any order issued pursuant thereto shall be subject to a civil penalty of not more than $5,000 for each violation.

(2) The DOE may at any time refer a violation to the Department of Justice for the commencement of an action for civil penalties. When the DOE considers it to be appropriate or advisable, it may compromise, settle and collect civil penalties.

(c) *Criminal penalties.* (1) Any person who willfully violates any provision of this part or any order issued pursuant thereto shall be fined not more than $10,000 for each violation.

(2) The DOE may at any time refer a willful violation to the Department of Justice for criminal prosecution.

(d) *Other penalties.* Willful concealment of material facts or false or fictitious or fraudulent statements or representations, or willful use of any false writing or document containing false, fictitious or fraudulent statements pertaining to matters within the scope of section 524(c) of the EPCA by any person shall subject such person to the criminal penalties provided in 18 U.S.C. 1001 (1970).

§ 490.64 Injunctions.

Whenever it appears to the DOE that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any regulation or order issued under this chapter, the DOE may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices and, upon a proper showing, a temporary restraining order or a preliminary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include, without limitation, a mandatory injunction commanding any person to comply with any such order or regulation.

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Part XIII

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 770

49 CFR Part 623

[FHWA Docket No. 80-18]

Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: The DOT and the Environmental Protection Agency (EPA) have executed an interagency agreement concerning procedures to implement provisions of the Clean Air Act Amendments of 1977 which are applicable to DOT highway and mass transit programs. These procedures are incorporated in this interim final rule which amends 23 CFR 770 (FHWA Air Quality Guidelines) and adds 49 CFR 623 (UMTA Air Quality Conformity and Priority Procedures). Because it is important to implement these procedures at once, the DOT is putting this rule into effect immediately. However, public comments will be accepted on the rule for 180 days.

DATES: This amendment is effective January 19, 1981. Comments must be received on or before July 27, 1981.

ADDRESS: Anyone wishing to submit written comments may do so. Comments should be sent to FHWA Docket No. 80-18, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Harter M. Rupert, Environmental Quality Division, 202-426-4836, or Mr. S. Reid Alsop, Office of the Chief Counsel, 202-426-0800, Federal Highway Administration; Mr. James Getzewich, Office of Planning Assistance, 202-426-4991, or Ms. Jocelyn Karp, Office of the Chief Counsel, 202-426-1906, Urban Mass Transportation Administration, all at 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 constituted a comprehensive revision of much of the Clean Air Act (CAA) (42 U.S.C. 7401, et seq.). They required that revised State air quality implementation plans (SIP's) be prepared for all areas exceeding the national ambient air quality standards. New § 176(c) of the CAA (42 U.S.C. 7506(c)) provides that "[n]o department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve any activity which does not conform to a plan after it has been approved or promulgated under section 110," and that "[n]o metropolitan planning organization * * * shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110." New § 176(d) of the CAA (42 U.S.C. 7506(d)) requires that "[e]ach department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States and other jurisdictions, to the implementation of those portions of plans prepared under this section [110] to achieve and maintain the national primary ambient air quality standard."

The DOT has been consulting with EPA to develop procedures for implementing §§ 176 (c) and (d) of the CAA. The DOT and EPA have now agreed on conformity and priority procedures for programs administered by the FHWA and UMTA. This interim final rule contains the procedures that were agreed upon. The FHWA and UMTA intend for the procedures for conformity and priority to meet their obligations under §§ 176 (c) and (d) of the CAA.

The FHWA further intends these procedures to meet its obligations under 23 U.S.C. 109(j), which requires guidelines to assure that Federal and federally assisted highway projects are consistent with approved SIP's. The existing guidelines are being superseded by the procedures incorporated in this amendment to 23 CFR 770. Separate consistency determinations will not be required under the new procedures.

Part 770 was previously amended by the FHWA (44 FR 66193, November 19, 1979) in response to the Clean Air Act Amendments of 1977. That amendment to Part 770 allowed the use of the air quality procedures then in effect to satisfy the § 176(c) conformity requirement until more comprehensive procedures were developed. Those comprehensive procedures are contained in the interim final rule being issued today. Only four comments were received in the public docket (FHWA Docket No. 79-25) in response to the November 19, 1979 amendment. Those comments raised a number of questions about the conformity procedures and are addressed in the discussion of the interim final rule that follows.

The Administrators of the FHWA and UMTA have determined that this rule will not have a significant economic impact on a substantial number of small entities. It is possible that application of this rule could have an adverse economic impact on small governmental jurisdictions located in areas where transportation plans or programs do not conform to the SIP. However, the potential impacts derive primarily from the CAA and not from the procedures contained in this rule. An additional consideration with respect to the Federal-aid highway program is that highway projects have been subject to the analogous consistency requirement of 23 U.S.C. 109(j) since 1970.

Interim Final Rule

Conformance between transportation plans, programs, and projects and the SIP is required by § 176(c) of the CAA. Section 770.9 of this rule sets forth the procedures and criteria for making conformity determinations. The basic philosophy of the conformity procedures is to compare transportation plans and programs with the air quality plans and programs which are included in the SIP's. This comparison is designed to assure that the transportation plans and programs conform to the SIP's. Coordination and consultation at the State and local level remain an essential part of the process.

Many States have a SIP that contains transportation control measures (TCM's), identified by local officials, that are intended to reduce air pollution caused by motor vehicles. Transportation plans and programs will be determined to be in conformance with the SIP if they do not adversely affect TCM's in the SIP, and if they contribute to reasonable programs in implementing those TCM's. Conformance will be determined by the FHWA and UMTA as a part of the review conducted under 23 CFR Part 450 and 49 CFR Part 613 of the urban transportation planning process and the transportation improvement program. Before making a final determination of

nonconformance, representatives of the UMTA, FHWA, and EPA will meet with affected State and local jurisdictions and agencies and metropolitan planning organizations in an attempt to resolve problems which are discovered during the evaluation process. Once the evaluation process has been completed, including any necessary meetings, and the UMTA and FHWA determine that an area's transportation plan or program does not conform to the SIP, transportation program approvals will be limited in the affected area to preliminary engineering and environmental impact studies, advance acquisition of right-of-way involving hardship cases, and those actions that are exempt from sanctions under § 176(a) of the CAA, as defined by the EPA and DOT on April 10, 1980 (45 FR 24692). These funding limitations will remain in effect until the deficiencies are corrected and a conformance finding is made.

The conformance of individual transportation projects will be determined as part of the normal FHWA or UMTA project development process. A project will be found in conformance if any one of the following conditions exists: (1) The project is a TCM from the SIP (if the project is specifically included in the SIP, no separate conformance finding is required), (2) the project comes from a conforming transportation improvement program, or (3) the project is exempt from transportation improvement program requirements and does not adversely affect the TCM's in the approved SIP.

The project level consistency determinations made for highway projects under the previous FHWA regulation are no longer required. Compliance with the procedures in this new regulation will satisfy the consistency requirements of 23 U.S.C. 109(j).

It is the policy of the FHWA and UMTA that compliance with all applicable environmental requirements (including the requirements of the CAA and this regulation) should be undertaken and completed as part of the National Environmental Policy Act (NEPA) process, and that the relevant environmental documents should contain evidence of that compliance. This policy is set forth in the joint environmental regulation published by the FHWA and UMTA on October 30, 1980 (45 FR 71968).

After aproval of a final environmental impact statement (EIS) or after a finding of no significant impact (FONSI) is made under the joint environmental regulation, the project involved will not be subject to further conformity review unless: (1) A supplemental EIS significantly related to air quality considerations is undertaken, (2) A SIP revision is requested by the EPA, or (3) major steps toward implementation of the project (e.g., start of construction or substantial right-of-way acquisition and relocation activities) have not begun within 3 years of the date of approval of the final EIS.

Upon notification that a SIP revision has been requested and for 12 months after that notification or until the SIP is formally revised, whichever comes first, the UMTA and FHWA will not be permitted to authorize construction of any project which has been listed in a SIP contingency plan required by EPA in certain areas. However, projects exempt from sanctions under § 176(a) (45 FR 24692, April 10, 1980) will not be affected by this provision.

Section 176(d) of the CAA requires Federal agencies with authority to support or fund transportation-related activities to give priority to implementing the TCM's in the SIP's. In accordance with § 770.9 of this rule, a conformity determination cannot be made for the transportation program unless the program contributes to reasonable progress in implementing the TCM's in the SIP. In this respect, the conformance and priority requirements of the CAA and this rule are clearly related, and priority should be assured through implementation of the conformance procedures.

Section 770.11 provides that the priority requirement will be incorporated into the existing program and project review and approval processes used by the FHWA and UMTA. A review of implementation progress will be made by the FHWA and UMTA at the time of their review of the annual element of the transportation improvement program under 23 CFR Part 450 and 49 CFR Part 613. A progress review will also be made by the FHWA as part of the approval process for the annual program of projects under 23 CFR Part 630. Subpart A. The priority procedures provide for coordination between the EPA and DOT. In particular, the EPA will have an opportunity to review and comment on the annual element of the transportation improvement program, and the FHWA and UMTA will be provided an opportunity to review and comment on the revised SIP.

Section 770.13 requires grant recipients to assure that construction activities that receive FHWA or UMTA funding conform with the approved SIP. Coordination with the State air pollution control agency and with the FHWA and UMTA is also required. These requirements were included in the previous FHWA regulation. However, they now apply to transportation projects funded by the UMTA, as well as to those funded by the FHWA.

The procedures contained in this regulation do not necessarily apply to the same geographical areas as the procedures they replace. The previous FHWA procedures were applicable in all parts of the country. The new conformity and priority procedures are geographically limited to those areas having SIP's which contain TCM's for the attainment or maintenance of the national ambient air quality standards for transportation-related pollutants. However, the construction procedures in § 770.13 apply in all geographical areas regardless of air quality attainment status.

Section 770.205(b)(5) of the previous FHWA regulation required a State which had a process for granting permits for indirect sources of air pollution to assure that proposed highway projects were reviewed by the indirect source review agency. If the review agency found that the proposed project would result in a violation of applicable portions of the control strategy or interfere with the attainment or maintenance of the national ambient air quality standards, the project could not be approved by the FHWA. An indirect source permit process is not required by the CAA, but can be adopted by a State at its option as part of its effort to control air quality. Former § 770.205(b)(5) simply duplicated the permit process that already exists in several States and was not directly relevant to the Federal requirements for conformity and consistency. Accordingly the indirect source requirement has not been included in the new regulation.

Related Regulations

As previously noted, the FHWA and UMTA recently issued joint environmental impact and related procedures (45 FR 71968, October 30, 1980). Additional requirements for compliance with the NEPA are contained in the regulations of the Council on Environmental Quality (40 CFR 1500–1508) and DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, October 1, 1979). Under the foregoing requirements, an air quality analysis is still required as part of the EIS process. The results of the analysis are included in the EIS and air quality impacts are considered during the review of the EIS. However, this project level air quality analysis is not required in order to determine conformance. This is the

difference between the CAA and the NEPA—conformity is based on comparison, while the analysis for the EIS is a calculation of the anticipated pollutant emissions, dispersion and resultant concentration in the vicinity of the proposed project.

The FHWA and UMTA have also published a notice of proposed rulemaking (45 FR 71990, October 30, 1980) which would amend the joint urban transportation planning regulations (23 CFR Part 450 and 49 CFR Part 613). Those proposed revisions include several references to the procedures in this regulation in order to tie the planning process to the air quality conformity and priority process. For the same reason, the provisions of §§ 770.9 and 770.11 of this regulation include numerous references to the urban transportation planning process and the corresponding regulations.

Section 770.11 of this regulation also refers to 23 CFR Part 630, Subpart A, Federal-Aid Programs Approval and Project Authorization, which provides for FHWA review and approval of programs and projects proposed by State highway agencies. Section 630.110(g) of that regulation requires that "[p]rojects shall be in conformity with State air quality implementation plans * * *." (43 FR 34461, August 4, 1978).

Effective Date and Request for Comments

The development of the conformity and priority procedures in this regulation began with internal DOT working groups which developed some of the basic procedural concepts. This was followed by extensive and complex negotiations with the EPA to identify and resolve major issues and work out final details. The entire process required a 3-year effort to resolve the many complex issues involved. These issues focused on: (1) The stringency of the conformity criteria for highway and transit plans and programs, (2) the conditions under which projects would no longer be subject to further conformity review, and (3) the extent to which project actions by the FHWA and UMTA would be delayed when the EPA requires a SIP to be revised. The resolution of these issues and other concerns is reflected in the joint DOT–EPA agreement which is the basis for this regulation.

Implementation of the procedures in this regulation is essential in order for the UMTA and FHWA to ensure the conformity of transportation plans, programs, and projects with the SIP's which have recently been revised pursuant to the Clean Air Act Amendments of 1977. All of the revised SIP's have been submitted to the EPA. Most have been conditionally approved, some have been fully approved, and a few have been disapproved. In addition, there are 32 States with nonattainment areas that will be revising their SIP's before July 1, 1982, in order to request time extensions to meet the national air quality standards.

The revised SIP's have very specific requirements for TCM's as compared to the SIP's developed and approved in the early 1970's, which contained only general requirements. The previous FHWA regulation did not provide an adequate mechanism for assuring conformance with the new SIP's. It is important for the FHWA and UMTA to have adequate air quality conformity and priority procedures in effect before the States begin to commit themselves to specific TCM's for the purpose of attaining national ambient air quality standards. In this regard, it should be noted that the UMTA does not currently have any regulations for assuring compliance with §§ 176(c) and (d) of the CAA.

For the foregoing reasons, the FHWA and UMTA have determined that the issuance of this regulation in final form without prior notice and opportunity for comment and without a 30-day delay in effective date is in the public interest. At the same time, the FHWA and UMTA recognize their responsibility, under Executive Order 12044 and the DOT regulatory policies and procedures, to provide an opportunity for the public to comment on this regulation. Consequently, a 180-day comment period is being provided.

Issuing these procedures as an interim final rule will allow their implementation while comments are being accepted to the docket. It will also permit some experience to be gained in operating under these procedures.

All comments to the docket will be reviewed by the FHWA and UMTA. The need for future revisions to these procedures will be considered on the basis of those comments and the experience gained by the FHWA and UMTA under these procedures. Any proposed revisions affecting the substance of the EPA–DOT agreement which forms the basis for this regulation will be coordinated with the EPA before further regulatory action is taken. Although issued on an interim basis, the policies and procedures in this regulation are effective upon issuance and will remain in effect until revised.

Copies of Documents

Copies of the following documents related to this regulation have been placed in the public docket, are available for inspection and copying from FHWA and UMTA field offices as provided in 49 CFR Part 7, and may be obtained by contacting any of the individuals listed above under the heading "For Further Information Contact":

1. DOT–EPA Agreement, Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans, June 12, 1980.
2. EPA–DOT Notice of Final Policy and Procedures Memorandum, Federal Assistance Limitation Required by Section 176(a) of the Clean Air Act, April 10, 1980 (45 FR 24692).
3. EPA–DOT Memorandum of Understanding, June 14, 1978.
4. FHWA–UMTA Regulatory Evaluation of Interim Final Rule.

In consideration of the foregoing, Chapter VI of Title 49 and Chapter I of Title 23, Code of Federal Regulations, are amended by adding Part 623 and revising Part 770, respectively, as set forth below.

Note.—The FHWA and UMTA have determined that this interim final rule is a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting any of the individuals listed above under the heading "For Further Information Contact."

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Improvement Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; 20.505, Urban Mass Transportation Technical Studies Grants; 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Nonurbanized Areas; 23.003, Appalachian Development Highway Systems; 23.008, Appalachian Local Access Roads. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on: January 19, 1981.

John S. Hassell, Jr.,

Federal Highway Administrator.

Theodore C. Lutz,

Urban Mass Transportation Administrator.

1. Title 49 of the Code of Federal Regulations is amended by the addition of Part 623 which reads as set forth below:

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 623—AIR QUALITY CONFORMITY AND PRIORITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY FUNDED TRANSIT PROGRAMS

Sec.
623.101 Cross-reference to procedures.

Authority: 42 U.S.C. 4332, 7401 and 7506; 49 U.S.C. 1601 et seq.; 49 CFR 1.51.

§ 623.101 Cross-reference to procedures.

The procedures for complying with the Clean Air Act Amendments of 1977 (Pub. L. 95-95, 91 Stat. 685) and related statutes, regulations, and orders are set forth in 23 CFR Part 770.

2. Title 23 of the Code of Federal Regulations is amended by revising Part 770 to read as set forth below:

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 770—AIR QUALITY CONFORMITY AND PRIORITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY-FUNDED TRANSIT PROGRAMS

Sec.
770.1 Purpose.
770.3 Definitions.
770.5 Policy.
770.7 Applicability.
770.9 Conformance.
770.11 Priority.
770.13 Construction.

Authority:

Authority: 23 U.S.C. 109 (h) and (j), 315; 42 U.S.C. 4332, 7401 and 7506; 49 CFR 1.48(b).

§ 770.1 Purpose.

The purpose of this part is to set forth the procedures for implementing sections 176 (c) and (d) of the Clean Air Act of 1970, as amended (CAA) (42 U.S.C. 7401, et seq.), and the consistency requirement of 23 U.S.C. 109(j).

§ 770.3 Definitions.

(a) "Metropolitan planning organization (MPO)" is that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of §§ 3(e)(1), 5(1), and 8 (a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(e)(1), 1604(1), and 1607 (a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) "National ambient air quality standards" are those standards established pursuant to 42 U.S.C. 7409 (section 109 of the CAA).

(c) "Nonattainment area" is any portion of an air quality control region for which any pollutant exceeds the national ambient air quality standard for the pollutant as designated pursuant to 42 U.S.C. 7407 (section 107 of the CAA).

(d) "State implementation plan (SIP)" is the plan required by 42 U.S.C. 7410 (section 110 of the CAA) to attain and maintain a national ambient air quality standard. For the purpose of this part, an approved SIP is the implementation plan, or most recent revision of this plan, which has been approved or promulgated by the Environmental Protection Agency (EPA) under section 110 of the CAA.

(e) "Transportation control measure (TCM)" is any measure in a SIP directed toward reducing emissions of air pollutants from transportation sources.

§ 770.5 Policy.

It is the policy of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) that transportation agencies responsible for the planning and implementation of transportation facilities and services pursuant to Titles 23 and 49, United States Code, consult with the local, State, and Federal air pollution control agencies, as appropriate, and ensure that plans, programs, and projects conform with approved SIP's and that adequate consideration is given to preservation and enhancement of air quality.

§ 770.7 Applicability.

The procedures in § 770.9 of this part are to be applied to activities in nonattainment areas or portions thereof, as designated under section 107(d) of the CAA, and in air quality maintenance areas where State and local officials have determined that TCM's are needed to attain and maintain the national ambient air quality standards for transportation-related pollutants. The procedures in § 770.13 of this part apply to all construction projects constructed with UMTA or FHWA funds. Conformance findings made under § 770.9 of this part also meet the consistency requirement of 23 U.S.C. 109(j).

§ 770.9 Conformance.

(a) *General.* Conformance between transportation plans, programs, and projects and the SIP is required by section 176(c) of the CAA (42 U.S.C. 7506(c)). The UMTA and FHWA have an affirmative responsibility to assure the conformity of any activity they support, fund, or approve. Further, section 176(c) prohibits an MPO from giving its approval to any project, program, or plan that does not conform to the SIP. The conformity requirement applies in all nonattainment and maintenance areas requiring transportation control plans for transportation-related pollutants. In such areas, transportation plans and programs will be judged in conformance with the SIP if they do not adversely affect the TCM's in the SIP, and they contribute to reasonable progress in implementing the TCM's contained in the SIP.

(b) *Conformance of transportation plans and programs.* (1) Conformance of plans and programs will be determined and documented by FHWA Regional and Division Administrators and by UMTA Regional Administrators as part of the certification and transportation improvement program reviews (23 CFR Part 450 and 49 CFR Part 613). These determinations will be based upon an evaluation of the following actions:

(i) The MPO's determination that the transportation plan and transportation improvement program adopted by the MPO policy board are in conformance with the SIP;

(ii) The FHWA and UMTA finding that the urban transportation planning process effectively incorporates air quality objectives and procedures required by adopted DOT/EPA guidelines in the development of the plan and program;

(iii) The FHWA and UMTA finding that coordination exists between air quality and transportation agencies, including a finding that the MPO has met locally established procedures (developed pursuant to sections 121 and 174 of the CAA (42 U.S.C. 7421, 7504)) to integrate transportation and air quality planning prior to approval of the plan or program by the MPO policy board;

(iv) The advancement of air quality planning tasks included in the unified planning work program (23 CFR Part 450 and 49 CFR Part 613) in accordance with work programs contained in the SIP;

(v) The timely programming of TCM's (which can be funded by FHWA or UMTA and which are contained in the SIP) by including these measures in the State's proposed program or projects (23 U.S.C. 105) approved by the FHWA and the annual element of the transportation

improvement program (TIP/AE) (23 CFR Part 450 and 49 CFR Part 613) approved by the UMTA; and

(vi) The timely implementation of TCM's contained in the SIP, consistent with the priority required for these measures by section 176(d) of the CAA (42 U.S.C. 7506(d)) and subject to the availability of Federal funds.

(2) The June 14, 1978, Memorandum of Understanding [1] between the EPA and the DOT provides the EPA an opportunity to jointly review and comment on conformity of transportation plans and programs. When it is determined through the evaluation of these actions that reasonable progress is not being made on transportation planning or implementation commitments in the SIP, representatives of the UMTA, FHWA and EPA will meet with affected State and local jurisdictions and agencies, and MPO's to discuss problem resolution before the UMTA and FHWA make a final conformance determination. These discussions should focus upon, as appropriate, accelerating implementation of TCM's in the SIP and developing and implementing acceptable substitutes for delayed projects.

(3) Once the evaluation of actions in paragraph (b)(1) of this section has been completed (including the joint UMTA/FHWA/EPA meeting with State and local representatives, where necessary) and the UMTA and FHWA have determined that an area's plan or program does not conform to the SIP, transportation program approvals will be limited in the area to preliminary engineering and environmental impact studies, advance right-of-way purchases involving hardship cases, and those actions that are exempt from sanctions under section 176(a) of the CAA (42 U.S.C. 7506(a)), as defined in the EPA–DOT Final Policy and Procedures Memorandum on Federal assistance limitations (45 FR 24692, April 10, 1980) [1] until the deficiencies are corrected and a conformance finding is made.

(c) *Conformance of transportation projects.* A project conforms to a SIP if:

(1) It is a TCM from the SIP (should the project be specifically included in the SIP, no separate conformance finding need be made); or

(2) It comes from a conforming transportation improvement program; or

(3) It is a project, exempt from transportation improvement program requirements, which does not adversely affect the TCM in the approved SIP. Exempt projects are these primary system and Interstate system safety projects included in the statewide safety improvement program (instead of the TIP) and emergency relief, junkyard control, outdoor advertising, and pavement-marking demonstration projects.

(d) *Projects not subject to further conformity review.* After approval of a final environmental impact statement (EIS) or after a formal finding or determination that a project will involve no significant environmental impact, a project will not be subject to further conformity review unless:

(1) A supplemental EIS significantly related to air quality considerations is undertaken; or

(2) A SIP revision is requested, in which case the procedures in paragraph (e) of this section would be followed; or

(3) Major steps toward implementation of the project (such as the start of construction or substantial acquisition and relocation activities) have not commenced within 3 years of the date of approval of the final EIS.

(e) *Project approvals during subsequent SIP revisions.*—(1) *EPA activities.* (i) There may be situations that would cause the EPA to require the SIP to be revised. The revisions may add TCM's to an SIP which previously had none or increase the emission reduction responsibility of the transportation sector. The EPA will determine the need for SIP revisions based upon its review of the reasonable further progress schedule in the SIP and the degree to which the schedule is being met. Some of the situations which could affect the meeting of this schedule are:

(A) Incorrect assumptions on growth rates and travel demand;

(B) Overly optimistic expectations of stationary source controls, vehicle inspection and maintenance programs, or TCM's; and

(C) Inability to implement some portion(s) of the SIP.

(ii) By publication in the Federal Register, the EPA will notify the FHWA, UMTA, and the public when a SIP revision has been requested. The EPA intends to require all of the current SIP's (where carbon monoxide and ozone are major concerns) to contain a contingency provision which would apply when monitoring of progress reporting indicates that reasonable further progress toward attainment of air quality standards is not being maintained, and the EPA determines the SIP must be revised. For areas over 200,000 population, the contingency provision in the SIP should include a locally developed list of projects which implementing agencies have agreed can be delayed during an interim period while the SIP is being revised.

(2) *FHWA and UMTA activities.* After notification by the EPA that a SIP revision has been requested, and for a 12-month period thereafter or until the SIP is formally revised, whichever is shorter, the UMTA and FHWA will not authorize construction of any project contained in a SIP contingency provision list unless it is a project exempt from sanctions under § 176(a) of the CAA.

§ 770.11 Priority

(a) Section 176(d) of the CAA requires Federal agencies with authority to support or fund transportation-related activities to give priority to implementing the TCM's in the SIP. In accordance with § 770.9 of this part, a conformity determination of the transportation program cannot be made unless the program contributes to reasonable progress in implementing the TCM's in the SIP. In this respect, the conformance and priority requirements are clearly related, and priority for air quality-related projects should be assured through conformance procedures.

(b) The FHWA will meet this requirement through implementation of the Federal-Aid Programs Approval and Project Authorization regulation, 23 CFR Part 630, Subpart A, which provides for the FHWA's review and approval of programs and projects. A review of progress will be made by the FHWA at the time of TIP/AE review and annual program of projects approval.

(c) The UMTA will meet this requirement through the TIP/AE review and approval process under 49 CFR Part 613. Air quality projects are to be given significant emphasis by MPO's in developing the TIP/AE and by the UMTA in its approval of the TIP/AE. A review of implementation progress will be made by the UMTA at the time of TIP/AE review and approval, and will be addressed specifically in the UMTA's TIP review memorandum.

(d) The FHWA and UMTA regional/division representatives will negotiate procedures with EPA regional offices for ensuring that the EPA receives copies of the progress reviews and approval documents listed in paragraphs (b) and (c) of this section. The June 14, 1978, Memorandum of Understanding provides the EPA Regional Administrator with an opportunity to review the TIP/AE at the time it is forwarded by a State or local agency for Federal agency action. If the EPA Regional Administrator determines that the TIP/AE does not contribute to reasonable progress in implementing the TCM's in the SIP, he/she will submit

[1] Available for inspection and copying from FHWA and UMTA as prescribed in 49 CFR Part 7.

recommendations for remedial or alternative action to the FHWA and UMTA regional/division representatives. The FHWA and UMTA will explicitly consider the EPA's comments and will notify the EPA of the disposition of its comments before acting on the TIP/AE.

(e) Similarly, under the June 14, 1978, Memorandum of Understanding, the FHWA and UMTA regional/division representatives will be provided an opportunity to review the SIP at the time it is forwarded to the EPA for approval. In light of the priority requirement in section 176(d) of the CAA, FHWA and UMTA reviews of the SIP should consider the projected availability of Federal resources to meet transportation commitments in the SIP and also to meet other priorities or obligations.

(f) Where other priorities are a consideration, non-SIP transportation measures can be funded or implemented to meet these obligations. However, SIP-related transportation measures must retain a high priority and funding decisions must promote timely implementation of SIP measures to the extent that funds are available.

§ 770.13 Construction.

(a) The transportation agency receiving funds from FHWA, UMTA, or both, shall take steps to assure that its current specifications, and any revisions thereof, and the use of specific equipment and/or materials associated with construction conform with the approved SIP. This shall be accomplished in coordination with the State's air pollution control agency.

(b) The transportation agency shall establish procedures to ensure that changes in the SIP are reviewed to determine if revisions to the construction specifications will be necessary.

(c) Revisions to the construction specifications resulting from the above requirements shall be made in consultation with the FHWA and UMTA, as appropriate.

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